

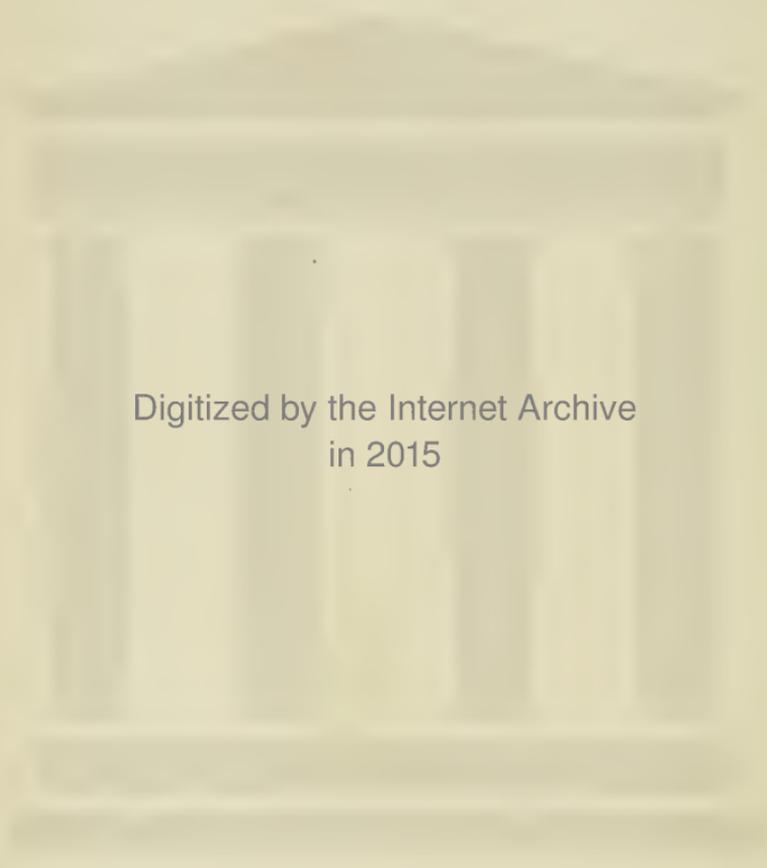


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RECORDS OF THE CAPE COLONY.



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RECORDS
OF THE
CAPE COLONY

From AUGUST to OCTOBER 1827.

COPIED FOR THE CAPE GOVERNMENT, FROM THE
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BY
GEORGE M^cCALL THEAL, D.Lit., LL.D.,
COLONIAL HISTORIOGRAPHER

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RECORDS OF THE CAPE COLONY.



[Original.]

*Report of the COMMISSIONERS OF ENQUIRY to EARL BATHURST
upon Criminal Law and Jurisprudence.*

MAURITIUS, 18th August 1827.

MY LORD,—In submitting to your Lordship the views we have taken of the system of criminal Law and Procedure which now prevails at the Cape of Good Hope, we shall arrange our observations under the three heads of the laws concerning crimes and offences and their influence upon the community, the structure and jurisdiction of the Courts, and the forms of Process which will include a review of the local regulations.

One of the earliest legislative acts that is to be found among the records of the Government is the resolution of the Governor and Council dated 12th July 1715, in which after considering a memorial of the members of the Court of Justice and a representation by them of the expediency of introducing the Statutes of India together with the Roman and Dutch Laws as the fundamental laws of the Colony, it was declared that from thenceforth the Statutes of India should be observed in // judicial proceedings where they should not be found to be repugnant to the proclamations and resolutions of the Local Government. The Statutes of India consisted at that period of several regulations touching the conduct and the property of various classes of people who were subject to the dominion of the Dutch East India Company, the principal seat of which was at Batavia, and hence it has arisen that the statutes have received the appellation of “Statutes of India,” and sometimes of Batavia. Altho’ it appears to be doubtful whether the Governor and Council of Batavia possessed the right of making

laws and regulations which were to be binding upon the dependencies of the East India Company, independent of the authority of the Directors in Holland, yet frequent instances occur in which the various enactments of the Governor and Council of Batavia have been compiled both for local observance and also for transmission to the different dependencies in the East, where they were received and adopted by the local Governments as far as the circumstances of each would admit. The first collection of Statutes was made at Batavia under the authority of Governor Van Diemen and bears date 1st July 1642. Only one manuscript copy of this code is extant in the Colony, and altho' a later collection was made at Batavia in the year 1756 professedly with a view to include and incorporate the various enactments which had been made in the interval, as well as to correct and amplify the articles of the more ancient code, yet after some search in the archives of this Government between the years 1756 and 1780, we have not been able to find any official record of the transmission of such a compilation, but we have found several separate articles of which it was composed and which had been transmitted from time to time from Batavia to the Cape for observance, and which were afterwards communicated by the Governor and Council of Policy to the Court of Justice. These articles are alone considered to have the force of law, but as copies of the modern collection of the Statutes of Batavia are in the hands of individuals, and are also in the Colonial Office, without due reference to their defective authority or to the distinction between those articles of the code which had, and those which had not, been received, it is now become a matter of difficulty to determine the extent of authority to which the articles of the modern code are entitled. One consequence of this state of the Law has been felt in the uncertainty that has prevailed in the application of capital punishment to Masters of Slaves who have caused their death by severe treatment or punishment, and it has led to the insertion of an article of the new code in a statement of the laws respecting slaves which was transmitted to your Lordship in the year 1823, from which it might be inferred that the capital punishment for that crime had been taken away and made discretionary. Altho' the Statutes of India contain many regulations of a

municipal nature and which were applicable to the different branches of civil administration established in the Dutch Colonies of India, yet we find that the greater part of those which have been adopted in the Colony relate to the treatment and punishment of slaves, and recognise many of those harsh distinctions, which, originally derived from the Roman Law, have been applied to the transgressions of the servile class in all communities in which that system has been retained.

Placaats and Colonial Statutes.

In point of authority and facility of reference the local statutes which were passed and promulgated antecedently to the first capture of the Colony by the British Forces are not in a much better state. They were compiled at different periods of the Dutch Government from 1692 to 1784, and were published in manuscript under the name of "Placaats," that of the year 1740 being the most full and comprehensive.

Until the labours of the Committee which was appointed in the year 1819 to compile and bring into a digested form the various acts, orders, and proclamations which have been issued under Dutch and British authority shall be completed, it will be difficult, indeed impossible, to determine how many of the local statutes have been partially repealed and what degree of authority is to be ascribed to them. Until a late period of the Dutch Government the Colonial Ordinances were circulated throughout the Colony in manuscript copies only, one collection of which exists in the office of His Majesty's Fiscal and another in that of the Secretary to Government, the former being considered more complete. Authentic copies of the proclamations issued by the British Governors from the first capture of the Colony in 1795 until the restoration in 1803 to the Batavian Government are entered in a large volume which is kept in the Colonial Office, and the original proclamations and orders also exist, tho' not in a collective form, issued by General Janssens from the year 1803 to 1806 including also those that were framed by the Commissioner of the Batavian Government Mr. De Mist, which although provisional in their nature have been adopted in most of the Departments of Government. In the course of the last year the various proclamations, orders,

regulations, circular letters, instructions and appointments, issued and made by the British Governors from the year 1806 to the end of the year 1825 have been reprinted at the Government Press, and are intended to be circulated in the Districts where the want of them has been greatly felt and but imperfectly supplied by a previous collection of such proclamations as were considered to relate to the Colony.

An Appendix has also been published containing the rules of criminal procedure called the Crown Trial, the ordinance of Governor Janssens for the administration of the Country Districts published in 1805, and the Instructions to the Sequestrator dated 1819.

The proclamations which have been published during the period of the English administration have been accompanied by translations into the Dutch language, which are not considered to be correct, and indeed the originals in English bear the marks of haste and inaccuracy. In later periods these defects have been in some degree remedied, and a distinction has been made between acts of a legislative nature and those of mere temporary regulation.

As these collections have been officially transmitted to your Lordship, it will not be necessary to trouble you with a recapitulation of them, and it is sufficient for us to observe that they have in most instances conformed to the leading principles of the Roman Law and that in some special and important ones they have regulated and altered the administration of it.

The general objects which they have embraced consist of those of internal police, revenue and taxation, the distribution of land, the introduction of new tenures, the intercourse of the inhabitants with the native tribes beyond the borders, the preservation of game, and finally the relations of master and slave, and the other classes of the labouring population.

In the periods of the Dutch Government the professed basis of regulation appears to have been the Roman Law with as much of the modern alteration introduced by the States of Holland as was found applicable to the circumstances of the Colony. We have noticed however one enactment of peculiar severity introduced by the Dutch Commissioners (Messrs. Nederburgh and Frykenius) in the year 1793, by which persons who were found plundering wrecked vessels were ordered to be

hung upon the spot without any form of process or regard to persons, and if attempting to escape were to be fired at by the Militia.

An enactment of a no less sanguinary kind was proclaimed by Governor Van Plettenberg in the year 1774 for the purpose of prohibiting traffic between the inhabitants of the Colony and the Caffre Tribes, and it was declared that any person found bartering with them should be treated as a violator of the public peace and punished with confiscation of property, corporally, or with death.

The act of passing the boundary of the Colony without a license was prohibited by a proclamation of Lord Macartney in the year 1798, which subjected the offender to corporal punishment.

From the contents of the pleadings and the tenor of the acts of accusation in criminal trials that have come under our observation, we are disposed to infer that recourse has been more frequently had in the definition and punishment of crime to the enactments of the Roman Code than to those of the Provinces of Holland or even to the local Statutes. A meritorious attempt was recently made to furnish an explanation of the leading principles of the Dutch Criminal Law, and to introduce them to the knowledge of the English part of the Community, by the translation of a treatise on the Criminal Law published in Holland in 1806 by an eminent Dutch Jurist, and it is to be regretted that any circumstances should have retarded the completion of a work which was peculiarly calculated to supply information to the Magistrates and the Secretaries of the Country Districts, both of whom act as Public Prosecutors.

Crimes.

The definition of crime contained in this treatise and in that of Van Leeuwen do not materially differ from those of other European Codes framed upon the model of the Roman Law, but they are general and vague, and evidently leave great latitude to the Judge in the application of the law as well as of punishment.

The crimes which are punishable with death consist of

treason, open rebellion, wilful murder, crimes against nature, arson, and when accompanied by circumstances of aggravation, rape, incest when committed with near relations, coining base money, forgery of public notes or bonds, highway robbery and of the public mail, theft accompanied with housebreaking, stealing of cattle, sheep and horses, and agricultural implements left in the field.

The lighter offences consist of manslaughter, perjury, blasphemy, clipping or defacing the public coin, forcible or fraudulent rescue, extortion, and bribery, forgery, simple theft, fraud comprehending both public and private transactions, and the crime called stellionate, swindling, the forcible or fraudulent abduction and concealment of men, women and children, called "Plagium," polygamy, adultery, injury private and public, comprehending violence done or offered to the person, property or reputation of individuals.

We have prepared a Return of the number and description of criminals sentenced to receive public punishment between the years 1814 and 1825, specifying the number in each year, the nature of the crime as far as it could be collected, and also the condition of the delinquent. This document has been compiled from the sentences of the Court of Appeal and those of the Court of Justice and of the Landdrosts and Heemraden which require the Fiat of the Governor for execution, and which comprehend all convictions for crimes to which the Law assigns public punishment as distinguished from that which is merely correctional, consisting of temporary confinement or pecuniary fine, or of corporal punishment inflicted within the walls of a Prison or in the house by a master upon his slave.

From this return it will be found that the proportion of capital crimes has exceeded that of others, and that those of murder, violent assaults, and wounding, of cattle and horse stealing, are the most prevalent, but that the commission of crime has not increased in proportion to the general population of the Colony. The frequency of the crimes of murder and culpable homicide may be attributed to three causes, the doubts which have prevailed until a recent period respecting the responsibility of masters for the infliction of excessive punishment on their slaves and Hottentot servants, the violence

with which that class of the population and the Bushmen are wont to retaliate injury, and the spirit of indiscriminate revenge with which they are in turn pursued by the inhabitants of the Frontier Districts when suspected of robbing and depredation. Instances of this sanguinary spirit of retaliation have been extended to the latest period; but if it were necessary at the present to search for the existence of other causes to which the cruelty exercised towards the slaves and Hottentots antecedently to the year 1814 may be attributed, we might refer your Lordship to the just and forcible representation of the state of this branch of Colonial Jurisprudence which was made by Governor Lord Howden in a despatch dated 15th April 1814, and which is fully supported by the cases to which he referred. Wilful and malignant intention is by the Roman Law a necessary ingredient in the crime of homicide to justify the punishment of death. Extreme neglect (*culpa lata*) or the lesser degrees of it justify the infliction of punishment next to death or more remote from it, and it is in instances in which the immoderate use of this power of the master over his slaves, or where doubts have been thrown upon the proximate cause of their death, that the courts have hesitated in applying the extreme penalty of the Law. For it is maintained by His Majesty's Fiscal that the law of the later Batavian Statutes is controlled by the Roman Law, by which the wilful killing of a slave is made punishable by death, and by a more recent enactment wherein it was declared that the crime of homicide was liable to the same punishment without distinction of conditions. It has been stated to us by high authority that this principle had never been openly denied until the year 1816, when in the case of a prosecution instituted by the Landdrost of Graaff Reynet against a white inhabitant of that district for killing his female slave, (and which he had confessed), the authority of the Batavian Statute was used amongst other arguments to induce the Court of Justice to acquit the prisoner altogether. He was however sentenced to death by that Court, and on appeal to the High Court the sentence was mitigated to "some punishment short of death" in consequence of a trifling informality in the proceedings of the Prosecutor's Agent before that Court, which on being returned to the Court of Justice for execution, they declared

themselves incompetent to execute, and the delinquent was released.

In another and more remarkable instance which occurred in the year 1822 the application of the Law of Homicide to the killing of a slave by severe punishment was made by the Court of Justice in the case of a person of higher condition of life than the preceding, and who had ordered the infliction of severe floggings on the same day upon the body of one of his father's slaves, who had been represented to him as less active than the rest in performing his work. He received sentence of death from the Court of Justice, which being confirmed on appeal was carried into effect on the fiat of the Governor. We have annexed a report of this Trial before the Court of Justice which was printed at the Government Press and inserted in the *Government Gazette*. It will be found as remarkable for the punishment of a person of such rank for such an offence as for the evidence by which the charge was sustained.

Altho' these two instances were calculated to make an impression on the public mind, and may be considered as indicating the influence of better principles than those which are described in the despatch to which we have alluded, yet in the space of a few months after the last event, in the year 1822, we find that the punishment of a slave by another person of perhaps equal condition with the last and nearly in his neighbourhood, under circumstances very similar, accompanied by the illegal burying of the body of the slave without the permission of the Field Cornet, was reduced by the Court of Justice to 12 months imprisonment on appeal to them from a sentence of Landdrost and Heemraden in which the party after being declared to be guilty of gross ill-treatment of his slave had been sentenced to 15 years banishment from the Colony.

Another case has more recently occurred in which a land-owner who was charged with causing the death of one of his female slaves by a series of cruel treatment was sentenced by the Court of Justice to be imprisoned for the term of three months. We have added certified copies of these proceedings in the Appendix, and we think that they will exhibit the imperfect means by which the Courts are guided in the first instance in their judgments of the proximate causes of death

or mutilation, and which consist of the document called "Visum Repertum," furnished by the District Surgeon who is called upon to attend at the inspection of bodies of slaves or others reported to have come to their death by ill-treatment or violence, and also the feeble and imperfect use that is made of the power of cross-examination in regard to this as well as to other testimony.

Whatever were the doubts which were previously entertained respecting the application of the law of homicide to the crime of killing or causing the death of a slave by ill-treatment, they have been removed by two proclamations issued by the Governor in Council, in which we shall have to propose certain emendations hereafter, and altho' the sentence of the Court of Justice in one of the cases to which we alluded had given proof of the disposition of that Tribunal to enforce that principle at the period in which the Law was asserted by some to be doubtful, yet we are compelled to observe that the spirit in which the earlier and also the more recent Statutes of India were conceived is still apparent in the dispensation of the law and in the facility with which the distinctions applicable only to the servile class have been extended to the Hottentots. It has fallen within the power of the supreme authority to mitigate upon more than one occasion the severity of a statute which denounces death without mercy to a slave who offers violence to his master, and an instance is upon record in which the spirit of another Statute which punishes with death the intercourse (altho' unattended with violence) of a Heathen, Mahommedan, or slave with a Christian woman was manifested towards a Hottentot with a degree of severity which was equally invidious and unjust.

Altho' the prevalence of the feeling we have just mentioned has been observable in the application of the law to the offences of the servile classes of the population, yet we do not find that any disposition has existed in the Courts to visit with severity the commission of ordinary offences by persons of higher condition. We have reason to believe that in passing judgment upon the great number of slaves and Hottentots who have been convicted of the crimes of desertion, cattle stealing, and burglary, the Courts of Justice have not only been influenced by a consideration of the exposed and unprotected

state in which all property (especially horses and cattle) is necessarily left in a country so widely extended, and in which the population is so much dispersed, but also by that of the deplorable ignorance and moral degradation of those classes to whose depredations it is principally exposed.

Excepting the outrages committed by the Slaves, Hottentots, Bushmen, and Bastards upon each other, when under the influence of violent resentment, jealousy, or revenge, or in the instances of excessive punishment inflicted by masters upon their slaves, we do not find that the details of the criminal trials contained in the reports of the Court of Justice exhibit any remarkable features of sanguinary cruelty. The state of immorality which prevailed among the early inhabitants of the District of Graaff Reinet, and the spirit of defiance with which they opposed all attempts to restrain them in their encroachments upon the tracts occupied by the Hottentots and Bushmen, are yet apparent in the records of the Criminal Courts. The state of perpetual warfare and generally of aggression in which they were engaged with the native tribes has led to a feeling of indifference to their sufferings and an eagerness for their destruction, when engaged in pursuit, which it is found very difficult to repress.

In referring to the returns of crimes and offences tried by the Provincial Courts between the years 1818 and 1823 inclusive, those of the most frequent occurrence are the desertions of slaves and Hottentots from their Masters' service, vagabondizing and theft, and the complaints of these two classes against their Masters for ill-treatment, which in those Districts where the slaves are numerous seem to be nearly balanced by the offence of preferring false complaints against their Masters. The right of a slave to prefer a complaint against his Master for ill-treatment or for insufficient allowance of provisions is recognized both by a proclamation of Lord Macartney, and by the instructions for the Government of the Country Districts, and until lately the Fiscal at Cape Town and the Landdrosts of the Districts were bound to entertain the complaint, and if they perceived that there were sufficient grounds to bring it to the cognizance of the Court of Justice or of the Landdrosts and Heemraden.

By a subsequent article power is given to any of the judicial

Authorities before whom such complaints are brought to inflict domestic punishment upon the slave, in case his complaint should prove to be groundless.

By the 21st article of a proclamation to which we have before referred, issued by Governor Lord Charles Somerset and dated 18th March 1823, authority is given to the Magistrates to inquire into the complaints of slaves, and to proceed against the masters and persons complained of in such manner as the law directs, and if the complaint should prove groundless the slave is to be condemned to such legal punishment as the nature of the case may require.

By an enactment contained in a later ordinance of the Lieutenant Governor in Council, dated 19th June 1826, to which we have before referred, the *maltreatment* of a slave by the Proprietor, not attended with death, is made punishable by fine, imprisonment, banishment, or other sentence of the law according to the nature of the case and the degree of cruelty exercised, and the slave so maltreated is to be publicly sold on account of the owner, but under special condition of never coming again into his power or into that of his parents, children, brothers or sisters, and in case of conviction of an owner of a slave of any cruel or unlawful punishment, the Courts are empowered to declare the rights of the owner in the slave to be forfeited to His Majesty.

By the 10th clause of this ordinance, in cases of slaves complaining against their masters of insufficient food and clothing, an appeal to the local authority is allowed to either party, and the master is made liable to a penalty of fifty shillings sterling for the first offence, and five pounds sterling for the second, and if the complaint be proved to be unfounded and frivolous, the complainant is to suffer such legal punishment as the nature of the case shall be found to require.

No subject of greater difficulty occurs in the regulation of the duties of master and slave than that which assigns punishment to the latter for making groundless complaints, more especially when they relate to insufficiency of food and clothing, two points upon which there never appears to have existed any definite regulation. The latter omission will in some degree account for the great difference which is observable in the condition of the slaves in one situation and another, and

the greater privation to which they are exposed by being removed from the more settled parts of the Colony to the frontier, a change which is frequently inflicted as a punishment, altho' on many occasions it is nothing more than the consequence of a sale or transfer from one proprietor to another.

The complaints of the Hottentots for ill-treatment are cognizable by nearly the same authority as those of slaves, but if found to be true upon a summary investigation the complainants are entitled to be discharged from their service, and the masters may be fined in a penalty not exceeding fifty rixdollars and not less than ten; and if the complaints be found to have been wanton or malignant the complainants are to receive such correction as the nature of the case may require.

By an enactment of the same date as the above all breaches of the contracts into which Hottentots enter with their masters are punishable with domestic correction by order of the Fiscal in Cape Town or by that of the Landdrosts in the Country Districts, and in case of their deserving a more severe punishment they may be condemned after a summary investigation by Commissioned Members of the Court of Justice or Commissioned Heemraden to forfeit the whole or part of their wages, to temporary confinement, or to more severe corporal chastisement, exclusive of their continued service. Whether from causes attributable to the nature of these contracts, to their civil condition, and to the limited nature of the attempts to improve it, the number of offences committed by the Hottentots exceeds that of any other class. The development of these causes will more properly belong to another part of our report, and we proceed to the mention of the other parts of the criminal code which affect the community at large.

A numerous class of offences is comprised by the writers on the Dutch and Roman Law under the description of public and private violence, or the use of unlawful force, in disturbance of the public peace or in violation of the rights and properties of others.

Under the first of these descriptions are comprised high treason and rebellion, rescue of prisoners, robbery of the public mail, and in the latter description robbery from the person, rape, assaults, violent entry and riotous conduct in houses or

streets, (which in the return of offences is described by the term of "house and street molestation," and finally injury to the person or to the honor and reputation of others.

A memorable occasion occurred at the end of the year 1815 for repressing by a vigorous application of the law a spirit of treasonable resistance which had for some time pervaded the remote district of Graaff Reinet, where some turbulent individuals under the pretence of claiming the deliverance of one of their companions who had been apprehended, and bidding defiance alike to measures of conciliation or control, attempted to derive support from the treacherous dispositions of the native tribes on the frontier. Disappointed in this expectation, the Leader of the Rebellion and the followers whom he had persuaded to take up arms were speedily checked by the firmness of the officers of the Cape Corps, and the Landdrost and Field Commandants of Graaff Reinet. After retreating to the mountainous district of the Sneeuwberg, the Leader was pursued and killed and thirty nine of his followers were apprehended and brought to trial before a special Commission at Uitenhage in the year 1816. Five of these persons who had taken an active part in the rebellion were executed, others were banished from the Colony or the Districts in which they had resided, and the remainder were compelled to witness the execution of the Principals. This event we believe is the only one that has occurred since the last occupation of the Colony by the British Forces in which any act of open hostility has been committed by the white inhabitants against the British Government. The effects of it were confined to a portion of the inhabitants whose habits of life and distance from control had rendered them refractory and disobedient to the former Government. On this occasion they were taken in arms, and had conspired and committed acts of open rebellion and hostility after terms of forgiveness had been held out to them, on condition of surrender and dispersion. They were more formidable from their spirit, than their numbers, and from an opinion which had become prevalent that the Government would not venture to enforce the severity of the law against persons of their class, who had so long been allowed to defy it with impunity. The impression which was made by the execution of five persons who were principally concerned in

this rebellion seems to have been deep and lasting, and has tended to repress the disposition to resistance by which this remote part of the Territory had been long distinguished.

At a very recent period the fears of the Colonists were raised by the sanguinary acts of a few Negroes and Hottentots in a remote part of the District of Worcester called the "Bokkeveld," which appear to have originated in some partial misapprehension of the tendency of the measures that were reported to be in the contemplation of the Government for the amelioration of the slaves.

The incautious language of a Proprietor operating upon the violent spirit of one of his slaves led to the combination of a few others from a neighbouring farm and some Hottentots not exceeding twelve in number, who after possessing themselves of the fire-arms which they had found in his house murdered him and another person who was an accidental visitor and severely wounded his wife. They were immediately pursued by a party of the inhabitants under the command of a Field Cornet, apprehended and brought to trial, and two of the slaves and a Hottentot were capitally convicted and executed, and the remainder condemned to confinement on the public works for various periods.

The circumstances which were proved at the trial indicated a very sanguinary disposition in the Leader of the party, and for which there appeared no other assignable cause than a determination which was attributed to the master to resist by force the supposed intention of the Government to emancipate the slaves. No satisfactory proof was afforded of any general conspiracy amongst them, or of any preparation whatever that indicated a scheme of general co-operation amongst the slaves in the purpose of murder and destruction, but there appears to have existed a facility in acquiring numerical support from other slaves and even from the Hottentots who were under temporary engagements of service in the same district, and who could not be personally interested in the measures that were supposed to be in contemplation for the emancipation of the slaves.

Under the same head of public violence are comprised tumultuous assemblies or meetings of the people, the suppression of which in Holland, it appears, was "formerly effected

by the officers and burgomasters of the cities and towns, who had authority to banish all persons who by words or deeds might say or do or undertake anything that might tend to the prejudice of the public welfare," but according to a modern writer was effected by proclamations of the Government adapted to the nature of local and temporary exigencies.

Riotous assemblies are also made punishable by the Roman Law, and at different periods of the Dutch and British Government it has been found necessary to subject all meetings and societies to previous restraint and to the licence of the Governor.

A proclamation to this effect was issued by Governor Sir George Yonge in the year 1800, which was repeated by the Acting Governor in the year 1803, although the object of the latter appears to have been directed more against meetings for public amusement that were held without the sanction of the Police, than against those of a political nature.

In the year 1822 a proclamation was issued by Governor Lord Charles Somerset cautioning the inhabitants of the District of Albany who in consequence of a suggestion that had been made to them to transmit to the Governor a statement of the circumstances of their distressing situation, had proposed to hold a meeting first at Graham's Town and afterwards at the house of an individual in the neighbourhood, against convening such meetings for the discussion of public measures and political subjects, and declaring that such meetings were contrary to Law, and the persons who should convene them without the authority of the Governor or of the Landdrost in case the subject was urgent, would be guilty of a high misdemeanour.

By a letter which was addressed by the Landdrost of Albany to the Colonial Secretary, and bearing date on the day subsequent to that of the proclamation, it appears that he had entertained apprehensions of the purpose of the meeting, which from the communication that had been made to the Person who had concurred in the expediency of it, we cannot conceive to have been well founded, and he was also led to impute to the inhabitants a spirit of turbulence and disaffection to the Government in consequence of a ludicrous and satirical writing which had been circulated by an individual, but to a very

limited extent, in the District, and which seemed to have no tendency to excite public discontent.

An admonition conceived in milder terms but in the spirit of the proclamation was also addressed to one of the conveners by His Majesty's Fiscal, and the meeting did not take place.

An attempt was subsequently made to convene a public meeting in the same District, and the permission of the Governor was requested through the Acting Landdrost, but as the object for which it was proposed to hold the meeting was general and undefined, and no further explanation of it was afforded, the meeting did not take place.

On a later occasion the sanction of the Governor was refused to the formation of a Society in Cape Town in which it was proposed to discuss literary and philosophical subjects and to connect with it the foundation of a reading library and a collection of Natural History. At a previous meeting of a few persons with whom the proposition originated, certain resolutions were framed and adopted declaratory of the objects of the Society, and by which it was provided that the discussion of political topics was to be entirely excluded, and the rank and respectability of the persons who had signified their wish to become members of the Institution, before the opinion of the Governor had been taken or declared, held out a guarantee for the due observance of this rule. For reasons which implied a distrust on the part of the Governor, and from objections of a personal nature to the Individuals who were likely to take a lead in the future proceedings of the Society, his sanction was refused, and all further measures were postponed.

A proposal for the formation of a Society in the District of Uitenhage for diffusing and extending the means of religious instruction amongst the families of the Dutch Inhabitants, and which originated in motives of the most commendable kind, was also rejected by the Governor upon the alleged want of competent persons in the District to carry into effect the views of the Society.

Although the sanction of Government was withheld upon these occasions, it has since been conceded to the inhabitants of Cape Town who were desirous of taking into consideration the effect of the proclamation by which the value of the rix-dollar was fixed and made a legal tender in payment of debts,

and the ordinance for ameliorating the condition of the Slave Population.

A Committee of the inhabitants of the District of Graaff Reinet and of Cape Town and its vicinity was also permitted to hold meetings at those places and to collect information and materials for an address to His Majesty's Government urging the repeal of several enactments.

Upon a still more recent occasion than the preceding the Lieutenant Governor in Council refused an application addressed to him by several individuals in Cape Town for permission to hold a public meeting for the purpose of taking into consideration the circumstances attending the suppression of the *South African Commercial Advertiser* upon the ground of its being "an act of His Majesty's Government in the case of an individual."

Amongst other criminal acts of public violence may be mentioned that of resistance to the officers of the Government and of justice in the execution of their duties, and the violent rescue of prisoners, which last has not been frequently attempted, notwithstanding the great distance they have to travel from the Districts to Cape Town, whither if they are not sent for trial they generally are for punishment. Their escape from the gaols, owing to the defective construction of the latter, is neither difficult nor uncommon, and requires early attention, as the pursuit and recapture of criminals in a country so thinly inhabited are attended with difficulty and give rise to that spirit of indiscriminate retaliation which we have already noticed in the cases of the Bushmen. By an ordinance published in 1740 founded upon an article of the Statutes of India, it was declared that every person was at liberty upon meeting with a slave who had deserted three or more days from his master, and would not give himself up, or who might offer resistance, to get possession of him *dead* or *alive*, without being subject to any responsibility, provided he should give notice to the Magistrate of the District.

In the year 1814 it was deemed necessary to caution the public against the prevalence of an opinion that had given occasion to some excesses in the pursuit of prisoners and others attempting to escape, and under which the killing of them after calling out three times to stand was deemed justifiable,

and it was declared that such a caution if not given by the order of a magistrate would not be taken as a justification, but should be considered in connection only with other circumstances of mitigation. At a more recent period, in consequence of desertions of convicts from the working gangs in the different districts, but more especially in that of Stellenbosch, and of the depredations which they committed upon the property of the inhabitants, it was considered expedient to authorize the officers of police as well as individuals when acting under the orders of the Landdrosts to employ force in apprehending them, and an Ordinance in Council was issued by which upon the discovery of any persons known to be deserted convicts or notoriously belonging to gangs of plunderers it was declared lawful for the pursuers after three repeated "calls to stand" to shoot at such persons with small shot, provided they aimed only at the legs and that they could not be otherwise apprehended. Robbery of the person on the highway is not a common offence, travellers being rarely unattended, and those who perform their journeys in waggons being generally armed and protected by the necessary attendants.

In Cape Town and the vicinity burglaries have become more frequent of late than formerly, and the recent emigration from Ireland appears to have led to an increase in the number and violence of personal assaults, aggravated generally by the effects of intoxication. Amongst the injuries offered by individuals to private property there is one species which seems to have been marked with peculiar severity. By a clause in the general Colonial Placaat passed in the year 1740 it was enacted that "any Person who might shoot, wound, or maltreat in any other manner any horse or other beast which had broken into gardens or otherwise, should be publicly punished on the scaffold."

In a country chiefly devoted to grazing, and in which the temptation to the trespasses of cattle are great, and the means of preventing them by fences very inadequate and expensive, it is probable that the inhabitants were little scrupulous in those which they adopted for the purpose of expelling stray cattle from the cultivated lands, and the necessity which occurs for applying the utmost stimulus to the exertion of draft cattle in the ascent of the rough and mountainous passes of the

Colony has certainly induced a habit of cruelty amongst the Boors in the use of those valuable animals, which has been remarked, and not unjustly attributed to them by travellers, but which is now less frequent than formerly, but is still attested by the marks of external laceration produced by that dreadful instrument the "sambok." The punishment awarded by the Colonial Placaat carries more of personal indignity with it than of wholesome correction which might have been as efficient in the shape of fine, or in any aggravated cases of cruelty, of temporary confinement.

Libels.

The last description of injuries which consist of written or verbal defamation are not of unfrequent occurrence, and more especially amongst the inhabitants of the Districts whose colloquial intercourse is marked with expressions of peculiar coarseness, which with a disposition to private slander give rise to frequent appeals to the Court of Justice and of Circuit. Verbal injury or defamation however is not made the subject of criminal inquiry except in cases where the highest authority or the members of Government are defamed, or where the defamatory words have been spoken in public or are accompanied by acts of violence. Defamation, altho' classed amongst personal injuries, produces the effects of a civil action consisting of honorable and profitable amends, by the first of which the slanderer is made to acknowledge his guilt and to retract his slander, and by the latter is condemned to the payment of a sum of money, which is claimed by the Plaintiff but is appropriated to the use of some public charity. The local statutes and those of Batavia of a very early date contain various enactments for the repression of defamatory language as well as that of libellous writings and compositions. As early as the year 1682 the attention of the local Government was drawn to the frequent occurrence of cases of defamation before the Higher Court, and since that period they do not appear to have much diminished. We have already had the honour to submit to your Lordship's notice in another Report the application of the principles of the Roman Law to cases of libel upon the character and conduct of the executive officers

of Government or of the Judges and Magistrates in memorials presented to the Governor. We have now to add that by a proclamation issued by authority of the Dutch Commissioners in the year 1792, and repeated by the Governor and Council, the use of expressions in documents, applications, or memorials judicial or extrajudicial, which were inconsistent with the courtesy and respect due to the established authorities, public Boards and Functionaries, was strictly prohibited, and the authors of such memorials were subjected to a penalty of fifty rixdollars and arbitrary punishment for the first offence, of two hundred rixdollars and arbitrary correction for the second, and of five hundred rixdollars and perpetual banishment from the Colony for the third. By the Batavian Statutes dated 1767 (corrected edition) the making, copying, or circulation of songs or poems in defamation or derision of individuals or of the High Local Authorities, subjects a person to corporal punishment or pecuniary fine proportioned to the circumstances of the case, and Landlords of houses in which such songs were sung or recited were made punishable by a fine of one hundred rixdollars, if they did not oppose, or if opposing ineffectually they did not give information to the police.

We do not find that prosecutions for libel have been numerous, and we have had occasion to submit to your Lordship's notice the circumstances of two trials for this offence, in one of which the author received sentence of banishment from the Colony for a term of years, and in another that of transportation to New South Wales. In both cases the ostensible object of the writers was the denunciation of abuses in the administration of the Government and of the judicial authority, and evidence tending to establish the truth of the allegations was rejected. In another instance a prosecution for libel on a public officer was dismissed by two commissioned members of the Court of Justice, and although the grounds of that judgment were not stated, yet it is reasonable to conclude that the matter contained in the memorial and the manner of presenting it were considered by them to indicate an intention of affording information to those who had power to correct abuse, and to negative the imputation of a malignant or criminal motive. The application of this principle however seems to be less consonant to the authority of the modern than to that of the more ancient

commentators on the Dutch and Roman Law, and the admission of evidence of the truth of a libel in criminal prosecutions is generally prohibited, and exception is only allowed to be made in the civil or mixed actions of injury (of which we have already made mention) where if the truth of the libel be established the act of recantation is excused, but the defendant remains still liable to the pecuniary fine or "profitable amends."

In a prosecution for libel which was instituted by order of the Acting Governor Sir Rufane Donkin against an individual who had preferred certain charges of arbitrary and corrupt conduct against the Landdrost of his District, evidence of the truth of them was admitted, in consequence of a wish expressed by the Landdrost to that effect. But with this exception we believe that the rule which excludes evidence of the truth of a libel in criminal proceedings has been constantly observed by the Colonial Courts.

Press.

The same laws we believe would have been applicable to Printed Compositions of a libellous nature, if the restrictions imposed upon the press and the act of printing had not until a very late period precluded all recurrence to it except under the sanction of the local Government. In noticing the laws applicable to libellous writings and publications, we did not advert to the restraints to which the use of the press had been made subject in the Colony, as we considered that they had been viewed rather in the light of measures of Preventive Police than as arising out of any positive enactments applicable to the state of the Press in Europe. But as the question has lately been urged upon the attention of his Majesty's Government, we will briefly advert to the nature of the limitations to which it has been subjected in the Colony.

It would appear from a reference to the records of the Dutch Government that very strong objections were made by the Directors of the Dutch East India Company to the introduction and use of the Press at the Cape, and that upon an application of the inhabitants for leave to import one for the sole purpose of securing a more correct knowledge of the

various laws which were transmitted for their observance, the Directors replied that such an object would be as easily accomplished by causing printed copies of the Laws to be transmitted from Holland to the Colony. The restraints, therefore, to which the Press in Holland had been made subject both by Placaats of the States General and by resolutions of the High Courts and until a recent period by the licenses of the Municipal Corporations, did not become necessary, altho' there is abundant reason to presume that the introduction of a Press into the Colony by an Individual would have been accompanied by the most severe conditions and restrictions.

It was not until the year 1800 that a Printing Press imported by two Individuals was allowed to be established by the authority of Governor Sir George Yonge, who publicly notified his permission to them to print a weekly newspaper, and declared them to be the only licensed printers in the Colony, with a threat of prosecution against any other person who should set up a press, of confiscation thereof and of the printing materials, together with a fine of 1,000 Rixdollars.

The Local Government being desirous of obtaining complete control over this Press, contracted with the proprietors for the purchase of it, and an individual of high authority under the Government was appointed to conduct it with the title of "Superintendent of the Press."

The office and establishment was remodelled by the Batavian Commissioner in 1803 under the superintendance of an individual who was appointed from Holland and received a salary from Government, to whom all profits derived from advertisements and sale were accounted for or paid.

The conduct of the Press then became subject to the control of the Procurator General, to whom the proof sheets were submitted for "Fiat," and nothing was to be inserted by Individuals, or even by the Civil Servants, which had not been sanctioned by the Governor.

The Government Press thus continued to possess the exclusive right of printing in the Colony, and the application of an Englishman to introduce another and to print a newspaper in the Dutch and English languages was refused.

After the occupation of the Colony by the British Forces in 1806 little alteration took place in the conduct of the Govern-

ment Printing Establishment, except by the appointment of an Editor by the Local Government in the year 1822, whose duties appear to have been limited to the selection of articles from English or Foreign Newspapers for insertion in the *Government Gazette*.

During the whole of this period and until the establishment of a Press and the publication of a journal called the *South African Commercial Advertiser* on the 7th January 1824, the Government Press enjoyed the exclusive right of printing for the Public and of publishing a weekly gazette, one of the Missionary Societies being only permitted to print hymns and tracts for the use of its congregation at a Private Press. Other attempts had been made to introduce Presses and to commence the publication of Periodical works for the instruction of the Colony, but they had been uniformly discouraged or resisted, while no exertion was made by the Government to give a more agreeable or instructive form to the only journal which it sanctioned, or to restore to it the character of utility and intelligence which it once possessed under the direction of its first superintendent.

This circumstance and the arrival of the English Emigrants in the year 1820 led to the application which was transmitted to your Lordship, and which was followed by your permission for the publication of a Periodical work entitled the *South African Magazine*, with an understanding, which was verbally communicated to the Parties, that all Controversial Points in religion and politics were to be avoided.

The official interference of His Majesty's Fiscal, and a caution which he deemed it expedient to give to the editor of this journal in consequence of some animadversions which appeared in the 2nd number upon the policy and measures of the Colonial Government in the settlement of the English Emigrants, and which was followed by an Interview between the Governor and the Editor, upon which we were instructed to make a special Report to your Lordship, induced the Editor and another person who had joined him to discontinue their journal. Nearly at the same period measures were taken by the Fiscal for controlling and afterwards for suspending the use of a Press which had been established by an Individual at Cape Town for the general business of Printing and for the

publication of a weekly Journal entitled *The South African Commercial Advertiser*.

This measure of precautionary interference, as well as that of which we have just made mention, was founded upon the instructions to the Court of Justice and the Procurator General, which were framed by the Batavian Commissioner in 1804 and which the Fiscal considered to be applicable to any attempt (whether made verbally or in a written or printed publication) to bring the Government or its measures into contempt. The Fiscal also considered that the Editor of the Weekly Journal had transgressed the terms of a prospectus which he had published on the 20th December 1823, in which it was declared that "the *South African Commercial Advertiser* would most rigidly exclude all personal controversy however disguised or the remotest discussion of subjects relating to the Policy or administration of the Colonial Government." For although the sanction of the Governor to an application made by this individual in July 1823 for establishing a Press, and for printing a Literary and Commercial Magazine, had been declined upon the ground of preference due to other and earlier applicants in the event of a Press being established in the Colony, and although a later application for the Governor's patronage to the publication of the *South African Commercial Advertiser*, enclosing the prospectus dated 20th December 1823, had remained unanswered and unnoticed, yet the Fiscal considered that document as having pledged the Printer to a course which as long as it was observed might remain unobstructed and required no interference from him as guardian of the public tranquillity. The Press and the Public Journal were thus established and continued for the space of four months under a tacit and implied consent of the Colonial Government, and the suspension of them was effected by a warrant of the Governor addressed to His Majesty's Fiscal, and which was executed by a Judicial Commission authorized by the Chief Justice. It also contained an order to the individual (which was afterwards withdrawn) to leave the Colony "on account of personal conduct" alleged to be "subversive of due submission to the lawful commands of the constituted authorities."

In consequence of an attempt that was made to publish

certain anonymous statements reflecting upon the measures adopted by the Fiscal in the suspension of the Press, a proclamation dated 11th June 1824 was issued, by which it was required that every person who should in future print any book or paper meant to be published and dispersed should print also his name and place of abode under a penalty of two hundred rixdollars, with liability to punishment by the Colonial Law if the contents should be criminal. It was not intended however that this law should alter or modify the prohibition to print or publish without license, which had been declared by the proclamation of Sir George Yonge.

After the suspension of the *Commercial Advertiser*, a notice was published in the *Government Gazette* that any persons competent to undertake the publication of a Periodical English Miscellany upon the terms proposed by the Editor of the *South African Magazine*, or a weekly paper upon the terms proposed by the Printer of the *South African Commercial Advertiser* on 20th December 1823, should address themselves to the Assistant Colonial Secretary, and that the Editor of the Magazine should be allowed the use of the Government Press, and should receive every encouragement.

Permission was given by the Governor to two Individuals to establish a Printing Press and to publish a newspaper entitled the *South African Chronicle and Mercantile Advertiser* upon a pledge which was given of their personal securities "for the strict exclusion of political or personal controversy."

A sum of money was also advanced by the Lombard Bank (in consequence of a communication from the Colonial Government to the President and Directors) upon the security of the printing materials to enable the individual who had purchased them to commence his business.

We do not think it necessary here to recapitulate the representations that were addressed to your Lordship in England by the individual whose press had been suspended, and whose journal had been to a certain degree superseded by the arrangement to which we have just adverted, and we will briefly allude to the proceedings of the Governor and Lieutenant Governor in Council relative to the Press, as constituting what under your Lordship's instructions must be taken to

be the present rule for the guidance and control of publishers of journals or periodical works.

Under the arrangement made with the individual whose Press had been suspended, he received on his return to the Colony a license to resume the publication of the *South African Commercial Advertiser*, after signing and subscribing the conditions contained in his prospectus of the 20th December 1823, and it was understood that the Governor and Council were to have the power of determining how far he adhered to it, and (after a caution once given) of suspending the publication, but that such decision would rest upon their responsibility, which would equally include a suspension, in consequence of his discussing Colonial measures with intemperance or personality in the fair spirit of those expressions, and a discussion of subjects which on account of their peculiar local importance might in the judgment of the Governor and Council endanger the peace and safety of the Colony. A suspension of the Journal was not however necessarily to imply the suspension of his Press, if used for other and general purposes of printing.

With regard to all other periodical works, it is now understood that a License is necessary to legalise the publication of them at the Cape, that a discretion which is to be regulated by a consideration of the circumstances of each case is vested in the Governor and Council of granting or withholding a license, and that none is to be granted unless the applicant shall consent to furnish a previous exposition of the character of his intended publication, by which he is afterwards to be guided, but that the adherence to restrictions upon future discussion is not required to be so strict as that which had been voluntarily proposed in the prospectus of 20th December 1823.

Under these instructions the Governor and Lieutenant Governor in Council have given notice to four individuals who had published Periodical works without previous licenses, to make applications for them, that the future publication of them without license would be illegal, and in consequence of a transgression of the terms of his prospectus by the Publisher of the *South African Commercial Advertiser* and the commencement of a second Journal without a license, the Lieutenant Governor in Council proceeded to admonish him of the necessity of conforming himself to them and of obtaining a license.

We are not aware that a similar caution was given to him by His Majesty's Fiscal, and no criminal prosecution was instituted, but we understood that the Fiscal would not have considered himself precluded from adopting such a course by the instructions and authority which had been transmitted to the Governor in Council, if even he had been made officially acquainted with them.

We do not advert to the later instruction of your Lordship by which the publication of the *South African Commercial Advertiser* has been again suspended, nor to the reasons assigned for it, because we understood that the measure had originated in representations made to your Lordship in England, and we do not find that the insertion of the observations entitled "Mr. Buissonne's case" in the paper of the 24th May 1826 was specially referred to by the Lieutenant Governor and Council in the admonition which was given to the Printer on the 4th August of the same year, although they stated generally that he had in many instances greatly transgressed the most liberal interpretation of the terms of his prospectus, a fact of which we think that no doubt can be entertained.

Your Lordship is in possession of two Petitions, one of which was addressed to His Majesty in Council in December 1824, praying for the removal of all restrictions upon the freedom of the Press, and signed by 209 individuals, of whom 157 are English, comprising chiefly those of the mercantile class at Cape Town, and several of the emigrant settlers in the District of Albany, and the remainder were Dutch, but comprising a smaller proportion distinguished by wealth or respectability. The second Petition was addressed to the House of Commons, and amongst other things prayed for the liberty of the Press duly established by Law.

We believe that this feeling is now generally entertained in the Colony, tho' perhaps in a greater degree by the English than by the Dutch inhabitants, and we think that it is attributable in the latter to the interest which has been felt in two great questions upon which His Majesty's Government has decided during the last three years, to the neglect of those means which the Local Government could at one period have commanded of anticipating the extent of the present demand by a temperate and judicious use of the power which it mono-

polised, to the open abuse which upon one occasion was made of that power, and to the transgression of a law in another, by which the Government Press was made with impunity an instrument of attack upon the character of an individual even more unjustifiable than the former.

These circumstances were not without their weight in the recommendation which we had the honor to make in our Report upon the finances of the Colony, respecting the abolition of the Printing Establishment conducted by the Colonial Government.

Crimes of Fraud and Forgery.

The crimes which come under the description of fraud or falsification (falsiteit) comprehend all acts or representations which are done with an intention to deceive and which are attended with injury to the State or to individuals. The punishment of which offences is left to the discretion of the Courts, and it may be further added that a similar discretion is allowed to the Courts in the punishment of acts which although not expressly forbidden are contrary to good faith and morals.

Usury.

Amongst these may be classed the practice of usury, for which no definite punishment has been assigned either by the Dutch Law or by the Local Statutes. The instructions for notaries which were issued by the Dutch Commissioners Nederburgh and Frykenius in the year 1793 restrained the rate of interest secured by bonds and other contracts to six per cent, and released the debtors from all obligation to pay a higher rate. A proclamation also was issued by Lord Caledon in the year 1807 which after adverting to the usurious practices to which the scarcity of money and the distress of the inhabitants had led, authorized and invited a disclosure of the names of individuals who had taken an unjust advantage of those circumstances, with a view to their prosecution, "according to the provisions as by law established," and on the same day a letter was addressed by the Acting Colonial Secretary to His Majesty's Fiscal acquainting him that "as an inhabitant of the Colony was supposed upon the strongest presumptive

evidence to have acted as an agent in a most shameful and usurious transaction, it was the desire of the Governor that he should be directed to leave the Colony.”

We do not find that since this period any prosecution for usury has ever taken place, altho' it is admitted that the practice has frequently prevailed to a very great extent, and the circumstances which were disclosed to us during our inquiries and involving the participation of a public officer now dismissed from his situation might have furnished ground for a judicial proceeding.

In a former Report we have taken occasion to observe that the profitable employment of capital in loans upon exorbitant interest was a practice congenial to the habits of the Dutch, and that it had received a partial check from the accommodation which it was the object of the institution of the Discount Bank to afford and for which no higher rate of interest than six per cent was allowed to be taken, in other respects it would appear that although the practice of usury had been declared to be criminal, and the rate of premium on such transactions had been enhanced by the risk and threat of prosecution, yet on the other hand no attempt has been made either to expose the practice even on account of its immorality or to punish it to the only extent the Law would allow, by the reduction of the interest to six per cent.

Punishments.

The punishment inflicted by the Colonial Courts for capital crime consists of death by hanging in the case of men, and by strangling in that of women, and where the offence has been attended with circumstances of peculiar atrocity it is followed by decapitation and exposure of the body. The punishment of breaking upon the wheel and the use of torture in criminal proceedings were abolished in pursuance of instructions signified in the reign of His late Majesty through Governor the Earl of Macartney to the Colonial Courts in the year 1797.

As it has been considered that a frequent exhibition of public punishment has a tendency to weaken the impression upon the minds of the lower orders of the Community, public executions in Cape Town do not take place more frequently than twice in

the year when sentences inflicting public punishment, but which include those of a very different degree and extent, are read in open court in the presence of the prisoners and with the observance of much solemnity.

Two commissioned members of the Court of Justice accompanied by the Fiscal proceed with the prisoners under a military escort to the place of execution, and after witnessing it return and make their report to the President and the other members.

The punishments of lower degree, but considered to be public, consist of scourging on the scaffold or under the gallows with or without branding (a practice which has very lately been dispensed with), waving a sword over the head of the criminal, labour for different periods at Robben Island or at the public works in Cape Town and its vicinity with or without chains, banishment from the Colony for a term of years or for life, and transportation to New South Wales. All sentences in which any of the punishments termed public are inflicted are required to be promulgated in the Court after having received the "Fiat" of the Governor, who by virtue of the 136th article of the Crown Trial or criminal procedure published in the year 1819 exercises the power in all criminal cases without exception of giving "such legal orders on the examination of sentences as the interest of justice and the welfare of the Colony may require."

The Governor also possesses by his Commission full power and authority to pardon all offenders except those guilty of murder and high treason, whom he may relieve subject to His Majesty's pleasure, and to remit any fines or forfeitures, which last power is limited by the instructions to sums not exceeding ten pounds.

The sentences passed by the Landdrost and Heemraden of the Districts and inflicting public punishment, accompanied with copies of the proceedings, are submitted to the Fiscal, who reports to the Governor thereupon. Those pronounced by the Full Court or by two Commissioned Members of the Court of Justice are accompanied by a circumstantial description of the crime drawn up by the Secretary of the Court. By these means the whole executive process of the law, by which any punishment comprehended within the description of "Public" as contradistinguished from that which is correc-

tional and "private" is brought under the view of the supreme local authority, but we do not find that this important branch of superintendance which the Colonial Law has assigned to the Governor has been exercised with the advice of the individuals who have been appointed assessors in the Criminal Court, a circumstance which is to be regretted, as the criminal jurisdiction which is assigned by the 2nd article of the Crown Trial to the Courts of Landdrost and Heemraden is very extensive, and as the sentences and the proceedings which have been submitted to the Governor for "Fiat" are quite as much deserving of consideration as those which have come before him in the regular form of appeal. It should also be observed that the prisoners tried and sentenced by the Landdrost and Heemraden and by the commissioned members of the Court of Circuit have not the benefit of legal advice or assistance either during the trial or in preparing their appeals, and are therefore entitled to every remedy which the best legal opinions may suggest to the Governor in the execution of his great power of confirming or mitigating their punishments. It would have been also desirable to have retained some record of the reasons upon which the alterations in the sentences have been made, and which are found to exhibit the words "Fiat executio," which are in some cases followed by a dispensation with the whole or a large part of the penal effects of the sentence.

Misdemeanours, breaches of police, and of the laws of revenue are punished by fine, imprisonment, or forfeiture, petty thefts either by fine and imprisonment, privately whipping in the gaols, or labour on the public works.

By a proclamation bearing date the 26th June 1818 the wilful neglect or violation of engagements by mechanics and servants brought into the Colony is made punishable by imprisonment or a fine of 25 rixdollars for the first offence, and corporal punishment in the gaols for the second, a power at the same time being given to the Fiscal to proceed against the masters of such servants in cases where ill-treatment is proved, and if it should be found to be of an aggravated nature to claim a sentence of correctional punishment. We have already had occasion to observe that sentences of this nature do not necessarily come under the revision of the higher

tribunals or the Governor, and we will now advert to another distinction which is recognised between *public* punishment and those which are denominated private, correctional and domestic. The former class attach infamy to the persons condemned for all offences of a public nature, diminishing but not destroying their credit as witnesses in a Court of Justice, and creating an incapacity to complain of being unlawfully disinherited, or to take an inheritance to the prejudice of near relations, or to serve in any honorable office or employment under Government. Altho' the punishment of public scourging has been inflicted upon Europeans and since the introduction to the Colony of European Emigrants of the labouring classes, yet it is not frequently applied to such offenders. Confinement at Robben Island and work upon the treadmill since its introduction into the prison at Cape Town have been substituted for it. In aggravated cases banishment for life or for a term of years, or from one district to another, and transportation to New South Wales have become the most usual punishments.

Banishment is authorized by the Roman Law, and it is also very generally mentioned in the Penal Statutes or Placaats of Holland, where however the right of the Provincial Courts to extend it beyond the limits of the United Provinces has been doubted.

By the Crown Trial the Courts of Landdrost and Heemraden have been authorized to pass sentences of banishment and transportation for limited but undefined periods, and with respect to the first of these punishments we may be permitted to remark that the circumstances and condition of the delinquent, and which alone give a character of severity or indulgence to it, have not been sufficiently attended to. Soldiers found guilty of serious offences have been condemned to be banished for life from a Colony in which their residence was only temporary, and have thus by their crimes obtained a release from permanent engagements. The transportation of offenders to New South Wales as a specific punishment seems to have been introduced into the practice of the Colonial Courts in the year 1818 from a suggestion that was then made of the expediency of providing a suitable place of employment for persons, especially Europeans or native white men who might be condemned to work at Robben Island or to be banished thither for life or

for limited periods. Instances have previously occurred of the transportation of criminals capitally convicted by the Colonial Courts and pardoned by his late Majesty, and upon the objections that had been felt during the periods of the Dutch Government to associate European convicts and especially soldiers with slaves in the performance of the same degrading labour, orders were issued to the Governor of the Cape to transport convicts of the former class to the Island of Edam near Batavia, where they worked for the benefit of the public.

In every sentence of banishment there is an order for the confinement of the prisoner in some place of security until an opportunity offers for sending him out of the Colony, and instances have occurred of great delay in the execution of sentences of banishment against foreigners who have been unable to defray the expence of their own transportation in foreign ships.

The ordinary place of punishment for criminals condemned to labour for the public by the Court of Justice is Robben Island, which is situated at the entrance of Table Bay and about 11 miles from Cape Town. The convicts are placed under the superintendance of a Civil Officer named the Commandant of the Island, who is assisted by a Military Detachment. Their employment wholly consists of quarrying blocks of fine schistose stone and afterwards of squaring them into flags and polishing them for use in the Government Buildings or for sale in Cape Town.

Neither this kind of labour nor the collecting of shells and preparing them for burning into lime at a bay on the western shore opposite to Robben Island, to which a small portion of the convicts is sent, are attended with any degree of suffering or severity, and excepting the privation of the use of spirituous liquors is not equal to the labour which the convicts at Cape Town have lately been made to undergo in the improvement of the roads and cleansing the streets. The prisoners detained in the gaol there are worked in the treadmill, and those in the Country Districts in the repair of the streets and gardens attached to the houses of the landdrosts. A custom has long prevailed of selecting a certain number of convicts from the prisons under long sentences or for life, and of employing

them as constables for the internal control and service of the District Prisons. This custom was at first dictated by motives of economy, but it has led to abuse in the unauthorized transfer of convicts from Robben Island to Cape Town and in the unnecessary increase of the number of those detained for the service of the gaol, from whence they have been occasionally drawn for the domestic service of the Fiscals and the executive officers of Police.

Convicts likewise under sentence for long terms and heavy offences have been allowed to return to the service of their masters (upon condition of wearing an iron ring and sometimes a chain round their legs), in consideration of the injury sustained by their masters in the loss of their services.

The power of remission of sentences is exercised by the Governor upon the application of the owners of slaves and that of removing them from Robben Island to Cape Town for the service of the District Gaols by the Fiscal and latterly by the Superintendent of Police.

The effects of this practice both upon the owners of slaves and upon the slaves themselves were brought to our notice in a case which has led to the consideration of a point of general importance in the punishment of slaves hitherto unnoticed, and which seems to rest upon the authority of some of the early commentators on the Roman Law in opposition to certain passages of the text, and in which it is declared that the right of property in the owner of a slave is extinguished by a sentence of condemnation to work in chains for life, that it is thenceforth transferred to the Fisc, and does not revert to the owner by a remission of the punishment. Whether the nature of the crime in the case brought before us (which consisted of an attempt of two slaves to wound or stab their master) or the presumed effect of a condemnation of them for life had made the master indifferent as to his property in them is uncertain, but it appears that he had neglected to register them within the time prescribed by the proclamation in 1816, and had not since applied to the Court of Justice for relief against the consequences of his neglect, which involved a forfeiture of his right. In the meantime the slaves had been employed in the domestic service of the Fiscal in consequence of their good conduct, and had presented memorials for

remission of their punishment, which it appears had been granted on former occasions to others in similar situations, but after a longer period of service and confinement.

We have reason to believe that the sense entertained by the members of the Court of Justice of the loss and prejudice which the owners of slaves would sustain by the condemnation of them to long terms of punishment in the public works has imperceptibly led to an abridgement of them, and that the same feeling has induced the owners to keep back information which might have led to the conviction of their slaves when suspected of crime. No pecuniary compensation is allowed to a master for the value of his slave condemned to work for the public either for a limited term or for life, and it may be deserving of consideration whether some measure of this kind should not be adopted in cases where the masters have delivered up their slaves to Justice or have attempted no concealment of their crimes, for we have observed in the abstracts of criminal sentences that frequent reference is made by the Court to the inefficacy of former punishment, and very striking instances were submitted to us of the effect produced on the slaves by the unauthorised remission of their punishments or by the transfer of the convicts from Robben Island to Cape Town.

The authority of masters to inflict punishment upon their slaves is confined to offences termed "Domestic," and which consist of neglect of work, wilful disobedience, disrespect and insolence, intoxication, desertion, and stealing from any members of the family, or slaves. By the Batavian Statutes masters were not allowed to handcuff their slaves or imprison them, but they might punish them by whipping to the extent of 39 lashes, and a custom has long prevailed in the Colony by which owners have been allowed to send both their male and female slaves to the different prisons for correction according to their own discretion. This practice having been abused, an order was issued by Governor Sir John Cradock in January 1813, by which the number of stripes in such cases was limited to 39, and the imprisonment of a slave on the complaint of his master to one month. A duty moreover of ten per cent was ordered to be deducted from the value of any slaves sold at public vendue after that date on account of ill-treatment by their masters. It was also ordered that the

names of the masters making application for punishment should be recorded, as well as the nature of the offence charged, and the punishment inflicted. About the same period and in consequence of undue severity in punishing female slaves in the prisons, a correspondence took place between Governor Sir John Cradock and His Majesty's Fiscal, upon which an order was issued by the former directing that the punishment of female slaves should be inflicted by flogging with rods upon their bare shoulders and with rope's ends upon their posteriors protected by their clothes, and in a separate part of the prison.

The instruments of punishment which have been used in the prisons of the Colony and also in domestic corrections consist of rope's ends, split rattans, the twigs of the quince tree, leather traces, and the "sambock" or whip made of buffalo hide, and altho' a change in the public feeling had given rise to a belief that the last and most formidable of these instruments was prohibited, yet it would not appear by the evidence of His Majesty's Fiscal that any special prohibition existed against the use of it, and it is an instrument universally employed by the waggon drivers.

These regulations prevailed in the Colony until the date of the Proclamation of Governor Lord Charles Somerset on the 18th March 1823 amplified and explained by the Ordinance No. 19 issued by the Lieutenant Governor in Council on the 19th June 1826. By the 12th Clause of this Ordinance the punishment of a slave by more than 25 stripes on one day and with any instrument of greater severity than those which are now or may hereafter be ordered to be used in the gaols is declared to be illegal and to subject the delinquent to the payment of a penalty not less than five pounds sterling nor exceeding ten pounds. By the 13th clause the public flogging of female slaves is prohibited, and the punishment of them for offences against the law in cases where their masters or owners are authorized to interfere is limited to solitary confinement in a dry place for periods which in no case are to exceed three days, and for domestic offences to whipping privately on the shoulders.

By the succeeding clause these punishments can only be legally inflicted by the owner, employer, or overseer (not being

a slave) except in the event of the owners being females, or suffering under disease, or above sixty years of age.

By a late order issued by the Lieutenant Governor the instrument of punishment ordered to be used in the gaols of the Colony for the punishment of male slaves consists of a light military "cat" of knotted cord, but much doubt yet exists whether the use of the same or of what instrument is permitted in the domestic punishment of female slaves by the 13th clause of the Ordinance dated 19th June 1826 where none is specified but it is declared that the extent of the punishment of the whipping on the shoulders is to be regulated by that which "prevails in any school for the education of youth in the Colony, and towards children of free condition."

We should not omit to observe to your Lordship that the order communicated in Earl Bathurst's circular despatch dated 28th May 1823 prohibiting the punishment of female slaves by flogging had been duly circulated to the local magistrates with directions that it should be enforced, and though partially complained of by some of the Colonists was generally acquiesced in by the inhabitants, and if the new order had contained a provision for the substitution of some appropriate punishment for female slaves, the revival of the practice even in a modified form would have been obviated.

The clause of the same ordinance by which the presumption of illegal punishment of slaves by their owners arising from recent marks upon their bodies, and from the consistent relation of the circumstances by themselves, is declared sufficient upon examination by the Court to throw upon the owner the burthen of proving that the punishment was not illegal or that it was not committed by him or by his procurement, occasioned a great and general feeling of dissatisfaction throughout the Colony, not so much on account of any great alteration that is effected in the manner of investigating such questions, as for the consequences of forfeiture to which a master might be exposed by the opportunity which this clause is alleged to have afforded the slave of surprising the good faith and the discretion of the Court by artful representations, and by the exhibition of self inflicted or neglected wounds.

Under the excitement of feeling which this apprehension created, the owners of slaves, who are more alive to interference

with the right of inflicting punishment upon them than with any other which is supposed to attend that species of property, did not sufficiently advert to the precautions which the same ordinance requires to be taken in the infliction of punishment and the regular observance of which by themselves would furnish sufficient protection to them against the fraudulent misrepresentations of their slaves, nor did they perceive that the continued practice of appealing to the judgment of medical persons upon the nature and appearance of the wounds of which the slaves might complain would furnish the most effectual means of detecting their attempts to impose upon the Courts.

We shall have to suggest some alteration in the mode of taking and receiving this species of proof which we conceive will tend to remove the objection which, altho' not generally made to the nature of medical certificates, yet in criminal proceedings may be justly urged against them.

The return of convictions to which we have before referred does not exhibit a numerous list of aggravated cases of cruel treatment of slaves by their masters, and we are disposed to believe that those which have occurred are more attributable to severe and repeated punishment than to the execution of undue labour or to insufficient food. It must be observed however that in the Country Districts the authority of the master is as far removed from control as the slave is from the means of redress. Sad and afflicting instances have occurred of the consequences of that desperate state of mind to which slaves, especially females, may be reduced from the remoteness and the hopelessness of protection, inspired as much by the endurance and repetition of petty vexations and oppressions as by a systematic contempt and violation of those feelings of domestic attachment which constitute the firmest bonds of social existence. These habits which are not less destructive of the happiness and moral condition of the proprietors and their families than the victims themselves are rarely cognizable by the Courts of Justice, and will probably only give way to the growing influence of moral and religious instruction amongst the former, and to the important improvement to which the late regulations may lead by the introduction and observance of matrimonial obligations amongst the slaves.

In such a state of things it cannot be a legitimate subject of complaint that the Legislature should have afforded the protection of an appointed Guardian of the Slaves against the uncontrolled authority of the Master, or that after admitting the power of the latter to inflict domestic correction to a certain extent it has pointed out the means by which any excess in the measure or manner of inflicting it is most likely to be checked. It would be difficult perhaps to select a case in which the abuse of this formidable power was ever more fatally exhibited than in that to which we have already had the honor to call your Lordship's attention, and none we think by which the necessity of the regulations introduced by the new ordinance is more fully justified. We have the satisfaction of stating that since the period of its promulgation in the Colony, prosecutions have been instituted under it, and in one of them the disposal of the slaves was ordered by the Court of Landdrost and Heemraden in consequence of the proof of undue severity furnished by scars on the body of one, and the evidence of two other slaves of the same proprietor.

There is reason therefore to hope that the operation of this law will be carried into due effect, and that the fears which it has excited from its supposed interference with the right of property in slaves will yield to the necessity as well as to the expediency of regulating their punishments by the rules of justice and moderation.

The prize negroes who have been condemned as forfeited by the Court of Vice Admiralty and indentured as apprentices have been considered amenable to the same system of domestic and correctional punishment as the slaves, but it has been stated to us by His Majesty's Fiscal that as he considered the collector and comptroller of the customs to be invested by the Order in Council which authorized them to execute the indentures, with a certain degree of protection and control over them, he has been in the habit of requesting their concurrence in the punishment of such of the Prize Negroes as were brought before him on the complaint of their masters. In a former report we had the honor to observe upon the manner in which this protection had been afforded to the Prize Negroes, and we have received no subsequent information which has

induced us to alter the view which we then took of it, or now to recommend its continuance. Most of the regulations of Police in the Towns, those of the Port at Table Bay, and for the protection of the Revenue, prescribe punishment by pecuniary fines, which in default of payment are followed by temporary imprisonment. They have been enacted at various periods, frequently upon the spur of the occasion, and bear strong marks of the jealousy with which the transactions of the colonists or their intercourse with strangers were viewed by the Dutch East India Company. As these regulations were circulated in manuscript copies antecedent to the year 1800, and were only to be found dispersed in the Dutch and English *Gazettes* subsequent to that period, it is not surprising that reference should have been found difficult, and the execution of them at all times imperfect.

The infringement of the license to sell wine by retail in Cape Town, Simon's Town, and in the Districts, generally termed "smuggling" in the return of offences, has been punished by various enactments which seem to have been revised in a proclamation issued in the year 1821, in which amongst other things the Resident of Simon's Town and the Boards of Landdrost and Heemraden in the several districts were authorized to make such further police regulations respecting the sale of Cape and foreign wines, beer, and spirituous liquors, as they should think necessary, subject always to the approval of the Governor. We defer our observations upon the system which this proclamation sanctioned until we come to treat of the Police, but we cannot omit to state that by the 14th clause the act of retailing without a license any Cape or foreign wines, malt or spirituous liquors, in a place where it was subject to such license was declared to be punishable with a fine of three hundred rixdollars for the first offence, or in case of inability to pay to arbitrary punishment, for the second offence five hundred rixdollars and in case of inability to pay, to flogging in the prison by the constables, and for the third offence five years' banishment from the Colony. The offence of hawking wine about the country by wine growers for the purpose of retailing it was punished with the same penalties.

By this proclamation the Colonial Government declared that

it reserved the right of selling to the highest bidder the exclusive privilege of retailing wine and spirits in Cape Town, and as the prices offered and secured by the "Pachter" or holder of the privilege were very considerable, he was vigilant in claiming the benefit of the penalties of the law, but had to complain of the difficulties interposed in the judicial proof of the infractions of his license, although we find that in the year 1823 several fines were levied and parties imprisoned on account of their poverty under sentences of "smuggling," and independent of the personal interest felt by the Pachter in the support of his exclusive license one third of the penalties was assigned by the proclamation to the officer prosecuting, one third to the "Pachter," and one third to the informer.

In the year 1823 an alteration was made in this system, and the retail of wine and spirits in less quantities than 19 gallons was permitted under annual licenses at 1,500 rixdollars each under penalty of double the value of the license, and in default of payment of being confined to hard labour at the treadmill or in the prison for a term not less than two months and not exceeding six, and for a second offence, of being confined to hard labour for not less than six months and not exceeding twelve, and in case of selling Cape wine or spirits by wholesale without license the same pecuniary penalty and in default of payment imprisonment for not less than one month and not exceeding three, increased upon the second offence to double the first penalty, and in case of inability to pay to imprisonment for not less than six months. These fines are ordered to be levied and distributed according to the usage of the Colony, namely one third for the Colonial Government, one for the Fiscal, and one for the informer, but if the latter should also be the holder of the license, and if his information should have led to conviction, the share assigned to the Colonial Government is made payable to him.

For the purpose of additional protection the purchase of a less quantity of wine or spirits than 19 gallons from any unlicensed retail dealer was made punishable by a fine of 200 rixdollars (£15 sterling), and all condemnations of payment passed by one Commissioner of the Court of Justice or by the Landdrosts and Commissioned Heemraden were declared to be recoverable in the manner set forth in a proclamation of the

same year, by "Parata executio," and no rehearing to be allowed unless the fine and costs were deposited.

The requisitions for the protection of the Revenue derived from the importation of goods by sea are contained in placats issued in the period of the Dutch Government, and which are to be found in the Placaat Book deposited in the Fiscal's Office, in proclamations of Governor Lord Macartney, Governor Janssens, and Sir David Baird, and in certain Port Instructions which are delivered to the Captains of vessels on their arrival, and the observance of which is enforced by a penalty of 500 rixdollars superadded to those imposed by former laws.

Instructions for the guidance of the Collector and Comptroller of the Customs were issued by Governor Lord Caledon in the year 1808, and additional instructions were issued by Lord Charles Somerset in 1814, but they relate to the duties and conduct of the officers of that Department and to the collection and account of the Revenue. They contain only one direction relative to seizures, one third part of which was declared to belong to the officer actually seizing, but in general terms enjoin diligence to the Collector in observing and executing the Laws in force, of which the latest were those contained in the proclamation of Sir David Baird.

It might be reasonably expected from the spirit of commercial restrictions which it was the object of the Dutch East India Company to maintain that the punishment of all attempts to violate or interfere with them would be proportionally severe. We accordingly find that by the latest placaat of the Dutch Government the landing of any goods without permission of the Officers of Customs was punished with the forfeiture of them and of treble their value.

By the provisional instructions of the Batavian Commissioner issued in the year 1803 and published in the Colony by Governor Janssens immediately afterwards, the importation of cannon, fire-arms, gunpowder or implements of war, except on account of Government alone, was severely prohibited, on pain of instant confiscation of the articles themselves as also of the boats and vessels by which they were brought, in addition to a penalty of ten times the value of the goods. By the same instructions the importation of India and China goods in private vessels was also prohibited, but we conceive that the first

article of this instruction was annulled by the several orders in Council which His Majesty was authorized by the 33 Geo. III, Cap. 2 to issue for regulating the export of arms and ammunition, and which have specially applied to the settlements on the coast of Africa since the annexation of the Cape of Good Hope to the British Dominions, and one of which dated in 1827 specially excepts from its operation "the Master General of the Ordnance for His Majesty's service." The Act of Parliament also to which this proclamation refers equally exempts vessels of war, or vessels or boats employed by His Majesty's Board of Ordnance.

The regulations of the Batavian Commissioner do not appear to have repealed the severe enactments of former placaaats relative to the illicit landing of goods, but soon after the occupation of the Colony by the British Forces, this offence as well as that of landing goods except Government Stores at any other place than the public wharf was declared by the Proclamation of Sir David Baird to be punishable with a penalty of 50 rixdollars for each transgression. It was also declared that boats detected either in carrying off specie or in landing or transshipping contraband articles would be liable to confiscation together with the slaves, and if free people were concerned or employed in working them they would be liable to imprisonment for 12 months, the owners of the specie or contraband articles being liable to a fine of treble the amount of the specie or of the goods attempted to be smuggled in or out of the Settlement, which also specifically included Simon's Bay.

The penalties and forfeitures were ordered by the same proclamation to be divided into three parts, one for the Colonial Treasury, one for the Fiscal, and one for the Custom House Officer or Informer. The Captain of the Port and Harbour Master as well as His Majesty's Fiscal, and the Collector and Comptroller of Customs, and all officers civil and military were enjoined to give every assistance in carrying these regulations into effect.

The direct pecuniary interest which these as well as former regulations have given to the officer whose peculiar duty it was and yet is to prosecute any infractions or evasions of them has much derogated from the feelings of respect with which the discharge of that important duty ought to be regarded,

and if we have refrained from bringing to your Lordship's notice a proceeding which took place in the year 1818 at the instance of this officer and the Comptroller of the Customs before two Commissioners of the Court of Justice, and more especially the distribution which took place of the property of the Crown, and the sacrifice which was then made of it, we have solely been influenced by an understanding that this matter had already come under the revision of higher authority.

With a view to provide some check upon the emoluments derivable from this portion of his duties, the provisional instructions of Mr. De Mist had required that His Majesty's Fiscal should be charged with the receipt, custody, and administration of the monies derived from fines and penalties and with the account of all disbursements made therefrom on account of criminal proceedings, and that every three months he should present an account of the same, which after being examined by the Court of Justice should be transmitted to the Governor and Council of Policy.

Upon learning from His Majesty's Fiscal that this instruction had not been observed, we at length obtained from him a return of the penalties and forfeitures declared by sentences of two Commissioners of the Court of Justice or by that Court itself from the year 1813 to the year 1825, and from the Audit Office a return of the sums paid to the Colonial Government during the same period, which amounted we find to 25,625 rixdollars, and which does not include the sum of 31,500 rixdollars the proceeds of the Ordnance Stores and Gunpowder to which we have alluded.

The fines and penalties in which parties are condemned for violation of the regulations of police and revenue, and for assaults and misdemeanours committed in the towns and districts, are ordered to be included in the accounts of the Landdrost and Heemraden, and ought to be submitted to the inspection of the Colonial Auditors.

The proceeds of fines imposed by sentences of the Sitting Commissioner in Cape Town are accounted for to the Colonial Government, and the distribution of shares in favor of the Prosecuting Officer and his deputies there has ceased by virtue of a proclamation issued by the authority of the Governor in Council.

Amongst the numerous acts which have become the subject of restrictive penalties we cannot omit to mention that of the destruction of game, which was at first only applied in the Districts near Cape Town, but was latterly extended to those of Swellendam, the remainder of Stellenbosch, Tulbagh, and George. Numerous restrictions had been imposed by the Dutch Governors on the killing of game on the first settlement of the Colony, when it was regarded as an article of food both by the newly arrived and by the indigenous inhabitants, and when it was expedient to husband the resources of the former and diminish the consumption of their cattle and stock. These restrictions were not removed until the year 1801 by Lieutenant Governor Dundas, when the great increase of stock in the grazing districts no longer required the substitution of other food in those where pasturage was deficient, and when the increase in the quantity of game had made the farmers apprehensive of the consumption of their grain during a temporary scarcity which had occurred.

The indiscriminate destruction of game consequent upon the repeal of the restrictions, and the encouragement that it gave to idle and wandering habits in the labouring classes of the population, led to the issue of one or more proclamations by Governor Lord Charles Somerset in the year 1814, prohibiting all persons from killing game in certain periods of the year, with an exception in favor of Boors or other free persons for their own travelling consumption, and prohibiting likewise the destruction of game by nets or snares, or that of young birds or eggs under penalties of fifty rixdollars and costs of prosecution, or one month's imprisonment in failure of payment.

Slaves were prohibited from shooting or destroying game, and hired Hottentots also except upon land the bona fide property of their masters or employers, under a penalty of 100 rixdollars.

In the month of December of the same year another proclamation was issued prohibiting all persons from killing hares, zebras, partridges, pheasants, khorans, pauws, ostriches, and the whole antelope species, between the 1st December and the 30th June in each year, without previously taking out a license upon a stamp of 5 rixdollars, and the killing of game on a Sunday was prohibited under a penalty not exceeding 100

rixdollars for the first offence and 300 rixdollars for the second. Inconvenience having been felt by the farmers in the Corn Districts from these restrictions, a proclamation explanatory of the former was issued in the year 1816, by which permission was given to the proprietors and occupiers of land which had been brought into cultivation to kill or drive away the game that might be found upon it, but not to pursue it beyond the limits of such land, and it was declared that no person altho' licensed should kill game upon land that was either owned or occupied by another without his express permission, under a penalty of 25 rixdollars for the first offence and 100 rixdollars for the second, after the first warning, with damages if proved. By the same proclamation a penalty of 50 rixdollars imposed by a former one upon finding game in any house in Cape Town or elsewhere was repealed. With a view to stimulate the vigilance of the Field Cornets in the preservation of game, they were exempted from the obligation of taking out licences by a circular letter addressed by the Deputy Colonial Secretary to the respective Landdrosts of Districts who were also allowed to charge a fee of two rixdollars and a half for every game license in addition to the stamp, and which was to be accounted for to the Colonial Office.

We find that very few prosecutions have taken place under these several proclamations, altho' we believe that the infraction of them has been frequent, and although the proof of it was facilitated by a clause in the first proclamation which declared that the information of one credible witness should be sufficient to produce convictions before the Landdrosts and Heemraden.

There are other acts relating to the Police of the Town and Country Districts, for the breach of neglect of which penalties have from time to time been enacted, and which we do not enumerate at present, as from the expence attending the translation of those comprised in the Dutch Placaats we should feel the same difficulty which we believe is experienced by the few persons who have had opportunities of access to the originals, in distinguishing between those which have fallen into disuse and those which are alleged to be still in force. We think that there are many of those enactments which will require revision as much in regard to the nature and extent

of the penalties as to the restraints which they impose upon intercourse and the free disposal of property. The greatest evil however which attends the silent accumulation of such restrictive regulations is the capricious and sometimes vindictive use which may be made of them against persons who have ignorantly and innocently transgressed them, and we cannot refrain from adding that such instances have not been wanting to impress us with the great importance of providing against the abuse of such authority by the local magistrates and of adopting the earliest means of instructing the inhabitants in the nature of the regulations by which their conduct is to be guided.

Jurisdiction of the Courts.

Criminal Jurisdiction is exercised in the Colony by the Courts of Landdrost and Heemraden in their respective districts, by Deputy Landdrosts, special heemraden, and the residents of Simon's Town, Port Elizabeth, and Port Frances, by the Court of Justice originally in all capital offences committed in any part of the Colony, and by way of re-audition and appeal from sentences of one or two Commissioned Members of the Court in Cape Town, and from the sentences of the Landdrosts and Heemraden either to the Commissioners of the Court of Circuit or to the full Court at Cape Town, and finally by the Court of Appeal in criminal cases.

Until the year 1817 the Courts of Landdrost and Heemraden possessed no judicial authority in such cases, but the duty of taking preliminary investigations at the instance of the Landdrosts and the Fiscal as Public Prosecutors devolved upon two Heemraden who acted upon such occasions as Commissioners.

The inconvenience arising from the want of an original jurisdiction and power to try smaller offences committed in the Districts, and the delay and expence incurred in bringing others before the Court of Justice, having been seriously felt, a proclamation was issued by Governor Lord Charles Somerset in the month of July 1817 authorizing the Landdrosts and Heemraden of all the Districts of the Colony to take cognizance of the crimes of vagabondizing, cattle stealing, and other thefts not accompanied by any circumstances of murder, violence by breaking into houses, or other aggravations, and also of all

lesser crimes and misdemeanours not liable by the existing laws to more severe punishment than that which is termed domestic, and to proceed to judgment and to pass sentence. The Courts consisted of not less than three members, of whom the Landdrost was always to be one, and an appeal was given against all sentences by which any person is condemned to a punishment exceeding domestic correction or confinement for one month.

This Jurisdiction was subsequently enlarged by a code of instruction called the Crown Trial, which was framed by the President and Members of the Court of Justice and approved by the Governor in the year 1819.

By the 2nd article, the Courts of Landdrost and Heemraden consisting of not less than three members of whom the Landdrost should be one were authorized to take cognizance of all crimes and misdemeanours committed in their respective Districts which are not subject to a more severe punishment than that of public scourging, transportation, banishment, or confinement for a limited period, and by the 93rd article the Landdrost and two Commissioned Heemraden appointed by the respective Boards of each District on the commencement of each year and to be approved by the Governor are authorized to take cognizance of all misdemeanors which are not subject to a more severe punishment than correction in the public prison, temporary imprisonment, and fines and confiscation, and transgressions of all penal laws relative to the public revenue and police, also of all complaints of masters of ships against their seamen, of tradesmen against their apprentices, of masters against their servants, whether free men or slaves, or vice versa, all complaints of parents against their children, and finally all complaints lodged with the magistrates and not capable of amicable arrangement.

By the 96th article of the same code the Landdrosts were authorized to summon before them all persons whom there were probable grounds to suspect of future misbehaviour tending to a breach of the peace, and to make them give bond with security to keep it, and in cases of spoliation of vessels wrecked upon the coasts of the Colony the Landdrosts have the power of apprehending individuals taken in the fact, of appointing a Commission amongst the Heemraden without

any form of process to do justice on the spot and to order the execution of their sentence.

The increase of population which took place in the Eastern District of the Colony by the emigration of British settlers in the year 1820 led to the appointment of subordinate magistrates named special heemraden, who were authorized to take preparatory information on oath respecting crimes subject to corporal punishment, and to commit the persons suspected to prison, to take security for keeping the peace, and to try misdemeanors brought before them on complaint, but not by way of public prosecution. At a later period and after the persons who had been appointed to these situations in the Albany District had been removed, two magistrates at Algoa Bay and Port Frances were authorized to take cognizance of the offences described in the 91st and 92nd articles of the Crown Trial consisting of misdemeanours and offences against the Police and Revenue, with a power of imprisonment for six months and of imposing fines to the amount of one hundred rixdollars, with an appeal to the Court of Landdrost and Heemraden of the District, when the imprisonment should exceed two months or the fine 50 rixdollars or £3 15s. 0d.

The Court of Justice sitting in Cape Town is the only Tribunal which possesses an original jurisdiction over capital crimes committed in all parts of the Colony. It will not be necessary to recapitulate the various changes which this Court has undergone since the foundation of the Colony, but it may be sufficient in that respect to observe that it was originally formed upon the model of the Courts of Holland, and that the changes which have taken place from time to time in its composition related to the numbers as well as to the character and civil condition of the members who were selected either from the class of civil servants of the Dutch East India Company or from that of the Free Burghers.

After the general revision which the Judicial in common with all the civil establishments of the Colony underwent in the years 1804 and 1805 by the authority of the Commissioner of the Batavian Government, the Court of Justice in criminal matters was declared to be composed of a permanent President and six Members, of whose votes five at least were required in pronouncing a definitive sentence inflicting corporal punish-

ment or any other less than capital, and seven (of which the President's must always be one) in awarding a definitive sentence inflicting capital punishment. This constitution of the Court was in some degree altered by Sir David Baird at the last conquest of the Colony, and by the appointment of a Vice President of the Court who was to sit in that character and exercise the functions of President in criminal cases wherein he did not act as Fiscal or Prosecutor. Several new nominations were also made upon the retirement of the Members who had been previously appointed by the Batavian Government and who had been sent from Holland and had received professional education there. In the subsequent nominations we have already had occasion to observe that this principle of selection has not been strictly adhered to, but if that of gradual assimilation of the British mode of criminal procedure had ever been an object with the Colonial Government, means might have been found to have introduced a knowledge of them by the appointment of Englishmen who had received professional education. In one instance only resort was had to those means, and we have always understood that benefit was derived from them.

By the provisional instructions of the Batavian Commissioner of the year 1804, and which were intended to have formed the basis of a Charter of Justice for the Colony, it was further provided that in case the requisite number of five or seven members could not be procured, the Court should address itself to the Governor and Council of Policy requesting that the temporary vacancy occasioned by death, sickness, leave of absence, or other legal hindrance should be filled up by the Secretary of the Court or some other eligible or respectable person experienced as far as possible in the laws and customs of the Colony. In conformity to this rule the former and present Secretary of the Court have taken part in the deliberations and voted in certain of the criminal sentences, but we do not find that the admission has extended to other persons not permanently appointed.

As much inconvenience was felt by the limitation of all criminal jurisdiction and procedure to the Court of Justice sitting at Cape Town, a proclamation was issued by the Earl of Caledon authorizing two or more of the Members of the Court

of Justice to repair to the distant districts and to take cognizance of all criminal causes upon which preliminary proceedings had been commenced by the Landdrosts and Heemraden in pursuance of the powers entrusted to them by the 152nd and 153rd articles of their instructions, with reservation only of judgment and sentence to the full Court in cases wherein it should appear after investigation that the crime committed was subject to the punishment of death. The Commission of Circuit was also authorized to give judicial authority to the Landdrosts whenever they stood in need of such a form to carry on criminal prosecutions, and when a crime was committed shortly before the arrival of the Commission they were further empowered to proceed to make judicial inspections, unless the Commissioned Members should prefer taking that duty upon themselves.

Independent of these powers the proclamation invested the Commission with others in the nature of criminal superintendence over the proceedings of the Landdrosts, which we have noticed in another place, and which from being eventually submitted in the shape of reports to the full Court of Justice at Cape Town, were calculated to extend its authority and control in criminal matters to the remotest parts of the Colony.

As the performance of these important duties necessarily engaged the attention of two members at least of the Court of Justice during three or four months of the year, and must have suspended during the same period all trials for capital offences committed at Cape Town and in the Districts of the Cape and Stellenbosch, and which are triable at the former place, the number of the members of the Court of Justice was augmented to eight, and the duty of proceeding on the circuit was ordered to be taken by them in rotation.

Some alteration in the jurisdiction and powers of the Court of Justice was subsequently made, and it was ordered that all crimes which after a full investigation before the Commissioned Members should evidently appear to be subject to capital punishment should be brought by the public Prosecutor before the full Court of Justice, and that crimes committed in the Districts, the punishment of which exceeded the powers of the Landdrost and Heemraden and the cognizance of which could not be deferred until the Circuit commenced, should be brought

for investigation before one Commissioned Member of the Court of Justice in Cape Town, and the same being closed should be prosecuted before the full Court consisting of at least five members including the Chief Justice or the President for the time being, a clause being added enabling the Senior Member of the Court to act for the Chief Justice and President when prevented by indisposition or other legal impediment from attending trials which admit of no delay, upon giving information thereof to the Governor. By the Provisional Instructions of the Batavian Commissioner it was ordered that after the proceedings should have been closed a report should be made by one of the Commissioned Members of the Court, but it appears that this duty has not been observed in consequence of the various occupations and want of professional knowledge in the Members. The proceedings however are read in their presence and sometimes in difficult cases sent round to them, and when they have met to give sentence each member gives his decision upon the questions proposed by the Chief Justice, the Senior Member first and the other Members in rotation to the youngest when the opinion of the Chief Justice is delivered.

The Members are permitted if they wish it to deliver their opinions in writing, but all who have been present at the deliberations must sign the sentence whether they concur with the Majority or not.

The cognizance of all crimes and misdemeanours committed in Cape Town and its jurisdiction not subject to a more severe punishment than that of public scourging, transportation, confinement, or banishment for a limited period is entrusted, if the nature of the case requires a public punishment, (transportation, confinement at Robben Island or elsewhere, and banishment included) to the cognizance of two Commissioners from the Court of Justice attending daily for the despatch of business, and the cognizance of the misdemeanours which we have before described, and which was given to the Courts of Landdrost and Heemraden when committed in the Districts is entrusted by the 93rd Article of the Crown Trial to one Commissioner of the Court when committed in Cape Town, and extended to similar offences committed at Simon's Town until the establishment of a Court of Resident at that place, to which more recently three heemraden have been added.

The multiplicity and miscellaneous nature of the business which the foregoing articles of the Crown Trial comprised, and the increase of the population of Cape Town requiring more continued attention than the Commissioners appointed for this duty in rotation found it convenient to devote, an ordinance was issued by the Lieutenant Governor in Council dated 27th May 1826 declaring that it should be lawful for the Governor for the time being with the approval of His Majesty to appoint one of the Members of the Court of Justice to be a "Permanent Sitting Commissioner," who should discharge such of the duties as had been theretofore performed by one Sitting Commissioner subject to certain alterations, and should have the power of binding over to keep the peace all persons suspected of future misbehaviour tending to a breach of the peace, and of administering oaths and taking voluntary affidavits.

Liberty was reserved to the Commissioner to take his seat in the full Court of Justice when required by the President or at his own convenience, except in cases of appeal from sentences passed by himself.

The criminal jurisdiction exercised by the Court of Justice over crimes committed in the Colony has been extended to those committed in ships when at sea or anchored in the harbours and bays of the Colony, and as yet no Commission of Piracy has been issued according to the intimation contained in the Governor's instructions and by which the cognizance by the Court of Justice of such offences as were committed at sea, and which appears to rest upon doubtful authority, would have been superseded.

The jurisdiction that was conferred upon that Court by the Provisional Instructions before referred to is described in very general and extensive terms both as regards persons and offences. Among the former it has been held to include military men when charged with civil offences, and in that respect only confirmed several earlier enactments of the Dutch and Local Government, by which the cognizance of such offences was distinctly assigned to the Court of Justice. A separate Court for the trial of military offences committed by the Troops raised in the Colony was established in the year 1803, but its authority and existence ceased with the capture

of the Colony in the year 1806. Instances have certainly occurred since that period of the trial and punishment of British soldiers for offences purely civil (coining) by military Courts Martial, but for which as well as for higher offences they had been considered liable by a learned assessor of the Court of Appeal to the Jurisdiction of the Courts of the Colony, whose opinion we find to have been conformable to one of His Majesty's Law Advisers, which was given on a former and similar occasion arising in a foreign Colony conquered by His Majesty's Arms, and in which the form of Civil Jurisdiction which had previously existed had been retained and sanctioned by His Majesty.

By the 11th Article of the Crown Trial it was declared that all questions which might arise upon the nature of a crime and the competency of any Inferior Court to take cognizance of it should be submitted by the Prosecutor to the decision of the Court of Justice, and that such decision should be governed by a consideration of the highest degree of punishment to which the law has subjected those crimes which are of a nature to admit of gradation of punishment proportionate to the circumstances of aggravation or extenuation with which they are accompanied, and in case such highest degree of punishment should exceed the authority with which the inferior Courts are invested their cognizance should cease and determine. This rule as applied to the jurisdiction of the Courts of Landdrost and Heemraden and Commissioned Members of the Court of Justice would not have been objectionable, if the punishments which they were authorized to inflict by the articles we have before referred to had not been left very undefined in extent, for example in the duration of the terms of imprisonment, banishment, and transportation, and in the corporal punishment and the amount of fines which these Courts as well as that of one Commissioned Member of the Court of Justice are authorized to inflict.

We have also had occasion to remark the existence of the same defects in the criminal enactments of the Roman Law and of the Dutch Placaats, occasioning an equal degree of embarrassment in ascertaining the degree of punishment to which the Commission of an offence might subject the offender, until the circumstances which according to the Dutch Law

are said to *qualify* the offence can be distinctly brought before the Courts and established. From the imperfect description of the jurisdiction assigned by the 91st and 92nd articles of the Crown Trial, and which had been adopted in other enactments of a later date, it was a matter of doubt whether the Sitting Commissioner of the Court of Justice in Cape Town was authorized to take cognizance of an offence which of all others was most common there, namely "petty theft," for altho' he had power to order correction and temporary imprisonment in the public prison, fines and confiscation, yet his jurisdiction was limited in the English Translation at least of the Crown Trial to "misdemeanors" and not to "crimes." As a reference of the latter to the Fiscal became necessary previous to the taking preparatory information, great delay was found to occur in bringing to trial persons charged with "Petty Thefts," especially slaves and Hottentots, the period of imprisonment before trial being found equal in some cases to the punishment ordered by the sentence.

A proclamation was therefore issued by the Lieutenant Governor in conformity to a suggestion of the President and Members of the Court of Justice, empowering the Sitting Commissioner in Cape Town, and the Landdrosts and Heemraden and Residents in the Country to take cognizance of all cases of simple theft where the value of the property stolen should not be sworn or upon investigation should not be proved to exceed the sum of twenty shillings sterling, reserving however the cognizance of thefts of cattle if sworn to exceed five shillings sterling in value and of other aggravated thefts to the Courts before adverted to, and described in the 2nd section of the Crown Trial.

The Sitting Commissioner in Cape Town is not expressly authorized by this ordinance to inflict a greater degree of punishment than he might have done before it passed under the authority of the 3rd section of the Crown Trial, and of the Ordinance which gave him permanent authority, but he and the Landdrosts and Heemraden and Residents are now authorized to take cognizance of "petty thefts" in the manner set forth in the 3rd and 4th sections of the Crown Trial, and to proceed summarily in the investigation of them, no appeal being allowed in cases where the punishment shall not exceed

one month's imprisonment with hard labour, the appealable amount of condemnations for fines remaining as before.

The jurisdiction which has been exercised by the inferior Courts in cases of revenue is comprised in the declaratory articles of the 3rd section of the Crown Trial, and was doubtless derived from the Provisional instructions of the Batavian Commissioner, in which the summary jurisdiction over all cases of fraud or contravention to the injury of any Branch of Revenue which is now entrusted to one Commissioner of the Court of Justice was then submitted to the cognizance of two. Jurisdiction in such cases, which had been exercised by the Courts of Landdrost and Heemraden to the amount of 300 rixdollars, was extended by a proclamation of Lord Charles Somerset dated 12th July 1822 to sums exceeding that amount and without limitation.

We have already had occasion to observe that the Jurisdiction over these causes embracing as well those of local revenue as breaches of the general laws of navigation and trade, the privileges of the East India Company, the national character of ships and seamen, has been left to the decision of one or two Commissioners of the Court of Justice in Cape Town, who without any previous knowledge of the rules of construction applied to Acts of Parliament, or of antecedent decisions upon the same subjects, and upon a summary investigation or as it is termed "de plano" have proceeded to the determination of questions involving interests of large amount and consideration both of law and policy, which are known to be exclusively governed by the principles of the maritime code of Great Britain expounded by the Judges of the Maritime Tribunals. It was certainly competent to the Court of Justice and its Commissioned Members by virtue of the Instructions under which they acted to claim an exclusive jurisdiction over breaches of local revenue, or the regulations passed by the local Government for its protection, and we are not aware that the Vice Admiralty Court established by His Majesty's Commission in the year 1807 has ever taken cognizance of causes which are strictly of this description. The jurisdiction which the Colonial Courts have claimed and exercised in penal actions given by British Acts of Parliament for the enforcement of the laws of British trade and navigation, must be referable to the

option which is given by those Acts, of trying causes of this description in the Vice Admiralty Courts established in the British Colonies or in any Courts of Record there, and not we think to the loose and general terms by which a jurisdiction is given to the Local Courts over all transgressions of Penal Laws relative to the revenue in the 91st article of the Crown Trial.

One of the consequences of this proceeding has been that of giving an appeal from the decisions of the Court of Justice in such cases to the High Court in which the Governor, who presided, was a party personally interested in the distributive portion of the proceeds, as regulated by Acts of Parliament, and not free from political interest in that share which the usage of the Colony assigned to the Colonial Treasury.

Rehearing.

The right of rehearing before the full Court in criminal cases (re-auditie) is allowed by the 4th section of the Crown Trial where definitive sentences have been given by one or two Commissioners of the Court of Justice, and before the full Court of Landdrost and Heemraden, where definitive sentences have been passed by the Landdrost and two Heemraden, or (as has since been declared) by the Landdrost and *one* Heemraad. But three exceptions are made to the exercise of this right, first when the sentences have been passed by default, 2ndly, where they have been given on a complete confession, 3rdly, where they do not impose a greater penalty than rixdollars 100 (or £7 10s. 0d.), and the Public Prosecutor has not made claim to a larger sum. Re-audition of cases of misdemeanour and of transgressions of Police and Revenue is not allowed, when the fine imposed does not exceed 25 rixdollars or £1 17s. 6d. sterling, or a larger sum has not been claimed.

Appeals.

Appeals are allowed from sentences passed by the respective Boards of Landdrost and Heemraden to the Commission of Circuit or to the full Court of Justice in cases of crime and misdemeanour, except when they are passed on complete confession and do not involve public punishment or attach infamy

and have not imposed a heavier fine than 300 rixdollars or £22 10s. sterling, or where the claim of the Public Prosecutor has not been extended to a greater amount.

The rules by which appeals from Definitive Sentences of the Judges of Circuit and the full Court of Justice at Cape Town are declared to be admissible in the High Court of Appeal are also contained in the same section of the Crown Trial, but whether from incorrect translation or inadvertency they have failed to afford a clear definition of a point upon which the Dutch Law was admitted to be obscure, and explanation was required.

After declaring as a general rule that no appeals lie from the sentences of any of the Courts which are passed by default, the regulations state that the distinctions of the Dutch Law upon the matter were repealed, and that no appeal should in future lie from a sentence involving public punishment passed by the Court of Justice, or Court of Circuit, on complete confession. The section that is next in alphabetical order states that sentences not passed upon a complete confession (a term by which is understood an acknowledgement of the act charged as well as of its criminality) are only appealable when they involve death, so that if these rules had stood alone, and if the translation of the Dutch Text had been correct, a large class of appeal cases would have been entirely excluded from the High Court, consisting of those in which the accused persons had not fully confessed the crimes charged and in which the punishment was less than death, and this is the understanding which has been ascribed to these regulations by the Secretary and Registrar of the Court of Appeals, to whose advice the Governor always paid much deference in the admission of them. But it appears that by the omission in the English Translation of the word "regularly" and of the word of reference, "such," both of which appear in the Dutch Text, a discretion was intended to be given in the admission of a certain class of Appeals which does not appear from the English Translation, and which would have the effect of enlarging the limitation which the preceding section had imposed.

This intention we find to be conformable to an opinion of the learned framer of the Crown Trial given in the preceding

year upon the admissibility of an appeal from the Court of Justice to the High Court, in which we perceive that he used nearly the same words which have been omitted in the English Translation ; but whatever was the extent of the limitation which was intended, or the sense of the subsequent rules by which it would appear that appeals are allowed to be made to the High Court even from sentences containing less than public punishment if they attach infamy and impose a penalty of 1,000 rixdollars, we conceive that all limitation became nugatory and was virtually taken away by that rule to which we have before alluded, and in which it is declared that “ the Governor for the time being is to be at liberty in all criminal cases without exception, upon examination of the sentences presented to him for ‘ Fiat ’ to give such legal orders and directions as the interests of Justice and the welfare of the Colony might require.”

The High Court of Appeal in criminal cases was established by a Proclamation of the Earl of Caledon in pursuance of His Majesty’s instructions in the year 1808 for hearing and determining all criminal cases whatever which were appealable from any or every Court within the Settlement, and the appellate jurisdiction was vested in the Governor for the time being and such assessor or assessors as he might from time to time be pleased to appoint, the sentences to be final, with reservation to him of the right of pardon and respite as it then existed and as we have before described.

A liberal construction appears to have been given by the Governors and their advisers to the terms of this proclamation in the admission of appeals in criminal cases until the year 1818, when a proclamation was issued by Lord Charles Somerset declaring that sentences given by the Court of Justice and the Court of Circuit either on confession or conviction of the delinquent in extraordinary process, a term which implies a summary mode of proceeding to avoid the delay of an ordinary criminal process in crimes which involve corporal punishment, should not be admissible in appeal, with a saving to the Governor similar to that contained in the article of the Crown Trial before referred to.

Altho’ we are willing to admit that some of the evils of the old mode of criminal procedure, against which it was the

primary object of the institution of the Criminal Court of Appeal to provide, have been remedied by the regulations of the Crown Trial, yet we have reason to conclude that indulgence to the subject in the exercise of his natural right to appeal, comprehending as well grievances in excess of punishment as in the proofs and process, would have been more satisfactory to the Government which had appointed that Court and had assisted it with legal advice, than a limitation which shut out the consideration of errors in a large portion of criminal processes, and which has practically established (and without cause assigned or legal advice given) a very frequent and not very creditable difference between the punishments awarded in the sentences of the full Court and the modifications of them as exhibited in the Fiats of the Governors.

The number of appeals against the sentences of the Court of Justice and Courts of Circuit has not been considerable, and has not exceeded sixty-two in the period commencing 12th February 1811 and ending 16th August 1825. Having made these observations upon those parts of the Code and Regulations named the "Crown Trial" which professed to define and to confer criminal jurisdiction, we will take an opportunity and out of justice to the intentions of the framers to give a short explanation of the circumstances which appeared to them to call for such an assumption of legislative authority as many of the regulations imply.

After the exercise of the criminal jurisdiction with which the Courts of Landdrost and Heemraden were invested by the Proclamation of the 18th July 1817, the want of established rules for their guidance in criminal proceedings was much felt, and the evils arising from the delay, prolixity, and uncertainty, and the technical distinctions between the ordinary and extraordinary process of the Dutch Law, were no less embarrassing in the administration of criminal justice by the Courts of higher jurisdiction. These evils were found to be of such a pressing nature that in the year 1819 the Governor resolved to give his sanction to the Code of regulations called the "Crown Trial" rather than incur the delay with which a reference to His Majesty's Government must necessarily have been attended. The Code was framed by the Chief Justice and President of the Court, and after receiving some emendations suggested by His

Majesty's Fiscal, and the Fiat of the Governor, was promulgated in the Court by the President in an address to the advocates and proctors, and afterwards published in the *Government Gazette*. It was not contended we believe that the President and Members of the Court of Justice possessed any legislative authority, but supposing them to have continued to act under the provisional instructions of the Batavian Commissioner, which constituted the Law of the Colony at the time of the last capture and have continued to be so considered and acted upon under the implied sanction of His Majesty's Government, the President and Members of the Court were empowered and authorized to submit to the Local Government a complete mode of proceeding in criminal as well as in civil cases, in order, as the 37th article of the instructions expresses, "to request the necessary sanction of the State."

If the regulations of the Crown Trial had been limited to the mode of proceeding alone, we should have considered such a purpose to have been within the competence, and well deserving the attention, of the Court of Justice, but they unfortunately attempted more; they attributed to an Inferior Court consisting of one Member only of their own Body (as we have had the honor to shew) a jurisdiction which had already been assigned by His Majesty's Commission to a distinct Tribunal, and they assigned powers to the Governor which had already been defined in His Majesty's Commission and in the Instructions under the Sign Manual.

Criminal Prosecutions.

We next proceed to an examination of the rules contained in this Code for the conduct of criminal prosecutions, first taking a brief review of the powers of public prosecution with which the Fiscal is invested, and those which have recently been given to the Landdrosts and Secretaries of the Districts in certain cases, and latterly to the Superintendent of Police as far as regards Cape Town and its jurisdiction, which is said to be comprised within the Lines, the valley of Table Mountain, and the hills which stretch from its base to the Sea.

Powers of the Fiscal.

The office of Fiscal, as exercised in this Colony under the instructions of the Dutch East India Company and those of the Batavian Commissioner, seems to have differed in some degree from that of the Fiscals in other Dutch Colonies. The rank, influence, and extensive criminal jurisdiction with which the former were invested at different periods of the Cape Government seems to have arisen from the necessity that was felt by the Dutch East India Company of closely connecting them with the interest of that Body in Holland, and of inducing them to watch with vigilance and to punish any neglect of its interests, or of those regulations by which it was hoped that the monopolizing and restrictive system of its Eastern Trade might be upheld. With this view the Fiscal was designated "Independent," a title subsequently abolished in the year 1795, when it was deemed expedient to declare that this officer was subordinate to the Local Government, and when the oppressive effect of the commercial restraints, extending also to the persons whose office it was to execute them had at length awakened the attention of the Company to the complaints of the Inhabitants.

The functions of the Fiscal however retained their importance, notwithstanding the change in his designation, for we find that both by the earlier Instructions as well as those of Mr. De Mist, in which he received the title of Procurator General (Attorney General), he was to exercise the functions of Public Accuser, he was enjoined to maintain and protect before the Court of Justice the greatness and power of the Batavian Government and of all the High and Low Legal Authorities appointed for the direction of public affairs in the Colony of the Cape, and further defend the Property, Means, and Revenue, rights, and privileges of the Government against all fraud, contravention, and spoliation whatever, by whomsoever attempted, and this either as Prosecutor or Defendant. In confirmation of the power conveyed in former Instructions, the Attorney General was authorized in case it should appear to him to be necessary to institute a criminal information against the Governor or any Member of the Council of Policy, to bring his action before the Court of Justice at Cape Town,

and prosecute it until it should be ready for judgment, when a copy of the record closed and under seal was to be made up and transmitted through the Council of Policy to the Asiatic Council and the Government in Holland. He was also instructed to prosecute subordinate officers of the Government before the Court of Justice in case of their misconduct.

By the Instructions of 1785 the Fiscal had been authorized to conduct civil and criminal prosecutions, and he was permitted in some of these to act jointly with the parties, and in all other civil cases he had a concluding vote in the Court of Justice. When acting *nomine officii* the place assigned to the Fiscal in the Court was at a distance from the table, in the Council of Policy next to the Second Person in the Government, and when not acting officially in the Court of Justice, next to the President. The title of Vice President and Acting President of the Court of Justice which had been given to Mr. Van Ryneveld by a Government Advertisement issued by Sir David Baird on the 5th April 1806, and by virtue of which he held the highest judicial authority in that Court, and at the same time filled the office of His Majesty's *Fiscal* and *Attorney General*, was omitted in the appointments of his two successors, who have neither enjoyed nor exercised any judicial functions, but we were sorry to observe that on all occasions the present Fiscal continued to take his seat in Court next to the Chief Justice, a place of rank altogether inconsistent with the nature of his functions and the relation in which we think he is placed towards the President and Members as well as towards the Public.

By the instructions for the Country Districts it seems to have been intended that the Fiscal should possess a general superintendence over all criminal proceedings instituted throughout the Colony, for altho' each Landdrost in his District is allowed to have the direction of all prosecutions for crimes committed there, and to bring them before the Court of Justice in Cape Town, yet they are bound to furnish reports to the Governor, to the President of the Court of Justice, and to the Fiscal (or as he is styled in these Instructions the Attorney General), with a view to make him immediately acquainted with all crimes committed in any part of the Colony. The Fiscal also possesses a right which is still reserved to him,

technically called the "Right of Prevention," the nature of which has been differently described, and by which he assumes the conduct of any Prosecution wherein he has been the first to imprison the Delinquent, or to take the proofs, or where the importance of the crime may appear to require his interference.

He still continues to correspond with the Landdrosts as Public Prosecutors of crimes committed in their Districts, but he declines giving professional advice or directions to the Secretaries when acting in the same character, and which is much to be regretted, as the acquirements of the persons who have been appointed to these situations, notwithstanding an earnest appeal to them on the part of Governor Sir John Cradock, have not qualified them for a correct discharge of their forensic duties.

The powers of the Fiscal as Public Prosecutor have been communicated in some respects to the Landdrosts, and they proceed to take preliminary investigations upon criminal matters exceeding their original jurisdiction, when qualified thereto by decrees of the Court of Justice, and in the prosecution of them before that Court in Cape Town they were until lately represented by one of the Deputy Fiscals, but according to a more recent arrangement by the general agent, who is an advocate, receiving a fixed salary which is paid by a general contribution from the District Treasuries. Before the Courts of Circuit the Landdrosts appear and prosecute in person all crimes which are cognizable by those Courts. Misdemeanors and those offences which we have before mentioned as appertaining to the cognizance of the Courts of Landdrost and Heemraden are prosecuted by the Secretaries of the Districts. Those at and within the jurisdiction of Cape Town were until lately prosecuted by one of the Deputy Fiscals, but since the publication of the Ordinance to which we have before adverted, that duty has been transferred to the Superintendent of Police or his Deputy, who are required by the 2nd clause to bring all persons charged with misdemeanors, and by a later Ordinance those charged with Petty Thefts before the Permanent Sitting Commissioner. The crimes committed in Cape Town and subject to the higher jurisdiction of two Commissioners are prosecuted by the Deputy Fiscal.

The duty of the public prosecution of crimes and mis-

demeanors committed in the Colony is thus distributed, but the Fiscal and the Landdrosts are authorized by the Instructions of 1804 when they suspect any Person of an intention to commit a crime to summon him and to give him a private warning and admonition, and this without incurring the suspicion of an intention to give offence on the one part, or without any impeachment or loss of character to the party summoned on the other in case the suspicion should turn out to be groundless.

Previous to the prosecution of misdemeanors the Landdrosts and the Commissioned Members of the Court of Justice in their judicial capacities are bound to try the effect of amicable mediation in cases which admit of such adjustment, but neither can these actions nor those of higher description be compounded by the Prosecutors themselves without leave of the Court. They are however bound to prosecute all offences committed in the limits of their respective jurisdictions, to make inquiries, and to cause informations to be taken before the Commissioned Members of the Court in Cape Town or as the case may be before the Commissioned Heemraden in the Districts.

Having had reason to entertain some doubts as to the manner in which these important duties had been executed, and whether the right and the duty of prosecution with which the Fiscal and the Landdrosts are invested excluded all discretion on their parts in the continuance or relinquishment of the criminal process, or whether the party injured was prohibited from assuming it himself, we were led to request the opinion of the President of the Court of Justice, who has referred us to the authority of the Ordinance of Philip the 2nd which is still in force, as well as to certain articles of the instructions of the Court of Justice and to the Fiscal dated in 1804, from which he deduces an indispensable duty in the public officers we have named to proceed in the prosecution of every offence, if by a decree of the Court before whom the preliminary information must be laid, such a prosecution should be ordered, while on the other hand he can only be excused from continuing it by the same authority, which on such occasions declares that the Prosecutor has been "diligent," and that there is no ground for further or immediate prosecution.

There is no doubt therefore that if the Public Prosecutor

should decline a proceeding after the preliminary information has been received, a party conceiving himself injured by his refusal would be entitled to take the opinion of the Court upon the point, and if according to the 98th article of the Instructions of 1804 the Court should order the Fiscal to accept of, institute, or join another in the action, he might be compelled to adopt either course however contrary to his own opinion.

We do not however feel that the same certainty exists in practice with respect to another part of his duty, the collection and exhibition of the preparatory information, upon the active and zealous performance of which much of the success of the ulterior proceeding in criminal cases is known to depend. It has been declared to us by His Majesty's Fiscal that when he has proofs or conviction in his own mind that a crime has been committed he is bound to prosecute, but the mode in which that conviction influences his mind is a matter of discretion. It further appears that altho' the Fiscal makes it his duty to inquire first into the truth of the information that he receives, yet if he sees reason to disbelieve it, he declines to prosecute or to put the case in train of public inquiry, and he professed himself unable to inform us in how many instances this discretion had been so exercised.

With a view to afford security to the public as far as may be attainable by written instructions against the operation of powerful influence upon the mind of the Public Prosecutor, the Fiscal is allowed to avail himself of information furnished to him by any of the Political Authorities, but he is directed never to suffer himself to be influenced or persuaded by them to entertain or desist from any action contrary to his own perfect conviction. It has been usual however for the Colonial Government to make communications to the Fiscal respecting the institution of criminal proceedings for political offences, the tenor of which seemed to convey the intimation of a request or wish, rather than the communication of facts upon which a discretion was to be exercised, and in one of these communications we observed positive directions given to the Deputy Fiscal to limit the investigation of certain general charges preferred against a public officer, on account of the length to which it would otherwise lead.

For the purpose of securing the duty of Public Prosecutor from the influence of nearer and more personal motives, the Fiscal and Landdrosts are required when they consider that they have reasons to excuse themselves from the performance of their official duties, to inform the Court of them, and if their reasons are admitted, to request that the Governor would appoint some other competent persons to act for them. They are enjoined to observe secrecy with respect to all proceedings or anything they may have learnt in the course of taking information, and they are themselves prohibited from receiving or from allowing their wives or children to receive any gifts or presents from any person whom they know or suspect to be under liability to prosecution or to be accused by another.

From the foregoing observations we are induced to conclude that it is an imperative duty in the Fiscals and Landdrosts as Public Prosecutors either upon the complaint of an officer of justice or representation of a party injured to make inquiries and to pursue the investigation of crimes, but that when once the course of investigation is brought to the judicial cognizance of the Court competent to entertain it, the Public Prosecutor must apply for the sanction of the Court either for the further proceeding, or for the temporary or entire abandonment of it, and we should observe that the Court to whom this application is addressed is not composed of the person who has been engaged in the preparatory informations. But altho' it appears that the discretion of the Fiscal and the Landdrosts in the prosecution of crimes is thus controlled by the authority of the Courts of Justice or their Commissioned Members, yet we have been surprised to find it maintained that by the construction of an article of the Fiscal's Instructions anterior in date to those upon which he now acts, the control of his conduct in the exercise of his functions as Public Prosecutor has been claimed by the Local Government and denied to the Court of Justice.

Without entering into the detailed reasons upon which their right of control was maintained by the President and Court of Justice, we may be permitted to express our concurrence in the interpretation which was given by the latter to an article of the Fiscal's instructions of the year 1804, which requires

that "respecting the discharge and execution of his duties he must obey the dispositions of the Court of Justice." In consequence however of the intimation of opinion transmitted by the Governor to the President and Members of the Court of Justice, and to which we have the honor to request your Lordship's attention, we find that the Court of Justice considered itself thenceforth precluded from noticing the conduct of the Fiscal, either by way of censure or admonition, and consequently abstained from that course.

Such was the nature of the duties of the Fiscal and Procurator General under the instructions of the year 1804. He also exercised others to which as coming more properly under the head of Police we shall advert in another place, but which have been recently transferred to an officer now designated "Superintendent of Police." In the Ordinance by which this authority was transferred, the functions of the Fiscal as Prosecutor (saving his right of prevention) are declared to be limited to the prosecution of those cases in which the offence is capital or to those committed by the Landdrosts and other chief magistrates, and to such crimes committed in Cape Town as are not specified in the third section of the Crown Trial, and which consist of misdemeanors and breaches of Police Regulations. The Fiscal is now authorized to assist the Government with his advice in all points of law, to prepare the drafts of proclamations and legislative acts, and to act on behalf of the Government in all revenue or civil causes. In these duties he is assisted by a Deputy, to whom he has the power of entrusting all cases not capital which may be brought before two Commissioners of the Court of Justice. By the 8th clause of this Ordinance a material alteration has also been made in the share which the Fiscal and his Deputies had been accustomed to take in fines and penalties awarded in prosecutions which they instituted and conducted. This share it appears was formerly regulated by the instructions to the Fiscal of the year 1785, and by a resolution of the Council of Policy of the following year, both of which adopting the usage that had before prevailed assigned one third part of the nett proceeds of goods seized and sold and of fines and confiscations to the Fiscal, one third to the Colonial Treasury, and one third to the Informer. By the instructions of the Batavian Com-

missioner issued in the year 1804 it was ordered that out of all fines or compositions decreed by any of the Courts and which were created by any law or statute (wherein no special appropriation was made) the Attorney General *ratione officii* might retain one fourth part, four fifths of which should be for himself and one fifth should be divided amongst his assistants in such proportion as the Governor and Council should prescribe, the remaining three fourths being assigned to the Government. By a subsequent article the Attorney General was entitled to retain the whole of the petty fines levied for transgressions of the laws of police, provided they did not exceed the sum of fifty Cape rixdollars or one hundred Caroli guilders.

We find that the distribution of these proceeds has continued to be regulated by the instructions of 1785 and not by those of the year 1804, but in consequence of an arrangement which was made in the year 1809 with the Fiscal and by virtue of which and in consideration of his receiving a fixed salary of ten thousand rixdollars, equal at that time to £1,666 Sterling, the Fiscal's share of fines and fees was paid into the Colonial Treasury, and continued to be so paid, notwithstanding the progressive depreciation of the currency until the year 1818, since which the Fiscal has again resumed the distributive share of fines and penalties according to the ancient usage.

By the clause of the Ordinance before referred to, it is ordered that this share is henceforth to be carried to the account of Government and to be paid into the Colonial Treasury. As the duties of the Fiscal were greatly reduced by this Ordinance and transferred to the Superintendent of Police, and those of the Deputy Fiscal as representing the Landdrosts were transferred to one of the Advocates, who receives a salary from the District Treasuries, the effect of the clause was not unjust as far as it regarded this portion of his emoluments, and was also to be commended in correcting the vicious principle upon which his services as Public Prosecutor had been allowed for so long a period to be remunerated, but it occasioned a considerable addition to the duties of the Fiscal's first clerk, to whom the prosecutions of misdemeanors before the Commissioned Members had been (not always properly) entrusted, and who has since been appointed to

perform that duty as well as the prosecution of offences against Police and Revenue without any increase of salary corresponding to his loss of fees.

Form of Criminal Process.

The present form of criminal proceeding is prescribed in the regulations to which we have before had the honor of calling your Lordship's attention, and which are denominated the "Crown Trial." The spirit of these regulations is derived from the Ordinance of Philip the 2nd of the year 1570, which was ordered to be observed in the Netherlands and the Dutch Colonies, modified and improved by the Instructions issued by the Batavian Government in the year 1804 and by those which were issued for the guidance of the Country Districts in the same year. In compliance with our instructions, we shall proceed to submit the substance of these regulations, as we think that your Lordship will perceive in many of their provisions the grounds of difference and perhaps of difficulty which may attend the task of approximating them to the practice of the English Courts.

After attempting to define the principles by which the jurisdiction of the different Courts in criminal matters is to be guided, the Crown Trial proceeds to give rules for the apprehension and securing the persons of delinquents, for the establishment of the crime or corpus delicti, the accusation, the trial, and the proof. Authority is given by the 22nd article of the Code to all officers in their respective jurisdictions to apprehend the perpetrators of crimes and misdemeanors who may be taken in flagranti delicto, but the Public Prosecutors are bound to submit such arrests to the cognizance of a competent Court in the space of 24 hours, together with such a statement of the circumstances and reference to witnesses as may enable it to determine whether the arrest is to be affirmed and continued. A general rule is also laid down, that no person who is not detected in the perpetration of crime can be apprehended or summoned to personal appearance (for the purpose of answering to any crime laid to his charge) before a Court to whose jurisdiction he is subject, without an order or decree, but if there should be periculum in mora, or

if the person charged with the commission of a crime should be beneath the rank of Burghers or Christian Inhabitants (an expression which we have before explained and which comprehends foreigners and the greater number of the free blacks), in such cases the officers of justice may themselves arrest them without an order, or the Fiscal may give orders for arresting and placing them in civil custody subject to the obligation of submitting the arrest to the cognizance of a Court in the space of 24 hours. In all other cases the right of issuing decrees of apprehension appertains to the Judges of Courts of competent authority, provided it be certain or there be strong grounds for believing that a crime has been committed, and that it will subject the party charged to corporal punishment, but if doubts are entertained upon these points, or whether the information received be sufficiently positive to justify apprehension, then the form of process is limited to personal summons of the suspected party, but like the former the process must be by a judicial decree, and on the appearance of the party to the summons, the Court determines whether he is to be committed to custody or to be at large on his pledge of hand and word to appear before the Court when required.

By the 31st article of the Crown Trial it is required that the depositions taken in preliminary examinations shall be upon oath, and that in giving a judicial decree no regard whatever shall be paid to evidence not sworn to. But we apprehend that these rules are not strictly observed and by necessity are dispensed with in the examination of slaves, Hottentots, and others who are not acquainted with the nature of an oath. They are also dispensed with in the judicial decrees necessary to authorize searches in the houses of the inhabitants above the rank of burgher, for an application is made in these cases either by the Public Prosecutor or the Judges taking information to the Governor stating the grounds upon which it is made, and after receiving his Fiat, it is transmitted to the President or Senior Member of the Court of Justice, who appoints a Commission of two other members accompanied by the Prosecutor and a Clerk of the Court to execute it.

These precautions, founded upon the principle laid down in the 2nd and 4th articles of the Ordinance of Philip the 2nd, are calculated to provide a proper degree of security against

arbitrary arrests, or against the precipitate decisions of magistrates, but we see no reason for excepting search-warrants from the same rule as other instruments of authority, or for requiring the personal attendance of the Judges on such occasions, or the previous Fiat of the Governor to authorize an act for the successful result of which secrecy and despatch are equally required. The preliminary examinations are not conducted in public, but from the number of persons engaged in them and the necessity of reference to the Governor, publicity and delay have taken place, which on such occasions it would have been desirable to avoid.

We are also induced to believe that the regulation which enjoins the report of apprehensions of persons below the rank of burgher to some Court within twenty-four hours is not duly observed, for it has been stated to us by His Majesty's Fiscal that he has never yet seen a decree of apprehension given for this description of offenders, and altho' it may have occurred that the unauthorized acts of apprehension by the Officer of Justice have been afterwards approved by the Higher Court to which they were submitted, and that such a form has been considered as standing in the place of a decree, yet we are much impressed with a belief that great laxity has prevailed in the practice as it respected this large class of the community.

Whenever the perpetration of a crime is brought to the knowledge either of a Court or of the public Prosecutor, no time is to be lost in proceeding to make a local inspection and a written record of all the circumstances which may tend to verify the principal fact, out of which criminality may be afterwards deduced or established.

In Cape Town and within a reasonable distance, the examination of grave cases of wounding and killing and the inspection of dead bodies is made by one or two Commissioned Members of the Court of Justice, attended by the Public Prosecutor or his Deputy, the Secretary who frames and signs the record, and one of the medical practitioners of the place, whose certificate of the state and appearance of the wounds and opinion of the cause of them is received and annexed to the proceedings.

In the Country Districts the Landdrost and Heemraden, and the latter at his instance in cases where he is likely to

become the Prosecutor, are authorized to take preparatory examinations and to make inspections and inquests, and in cases of minor import that duty may be committed to Veld Cornets. Authority is also given to those officers to proceed to take inquests of murder and burglaries, committed at any place that is at a greater distance than six hours from the residence of the Landdrost, and in the presence of two witnesses summoned for the purpose to inquire into and note down the circumstances which present themselves, as well as the names of persons who can give evidence. The veld cornet however is not allowed to summon witnesses who live out of the District. If any Individual should meet with an untimely death either by his own hands or by the violence of others, the body is not allowed to be buried until the Veld Cornet or (if in the vicinity of the Drostdy) the Landdrost shall have given permission after taking a proper Inquest, and no corpse of a Hottentot or of a slave is allowed to be buried, from whatever cause they may have died, without the permission of the Fiscal, the Landdrost, or the Veld Cornet, as the case may be, under a penalty of 25 rixdollars and liability to prosecution in case any violence shall appear to have been committed. The dispersed state of the population in the Districts of the Colony creates a great obstacle to the regular and expeditious performance of this important duty, and the manner in which we observed that it was performed in one of the Districts nearest to Cape Town, and in which the accidental deaths of Hottentots most frequently occur, has impressed us with an opinion that neither the qualifications of the Veld Cornets nor the vigilance of the Landdrosts has been adequate to the exertions which this painful and sometimes harassing duty is wont to require from them.

The applications for permission to bury slaves and Hottentots had become (at Cape Town at least) a matter of form, and were allowed to be granted by the clerks of the Fiscal. From the evidence of the Deputy Fiscal also it appears that the certificate of a medical practitioner of the appearance of a dead body found in or near to places of public resort would be sufficient to justify the interment of it without any other inquiry into the causes of death, but this seems to be a departure from the law and practice of Holland as laid down by Van Leeuwen.

Forged notes which constitute the *corpus delicti* in charges of making or issuing them are detained by the Deputy Fiscal, and deposited in his office. The nature of the material of which the bank paper has been made, has served to give facility to the offence of forgery, by increasing the denomination rather than the numbers of the individual notes and by fastening together parts of notes of different value.

The judicial investigation of all except capital crimes committed in Cape Town and its jurisdiction, and which lately appertained to His Majesty's Fiscal, has been transferred with the exception before noticed by authority to the Superintendent of Police and the Deputy Fiscal accompanied by one or two Commissioners of the Court of Justice.

By the 16th article of the 1st Section of the Crown Trial, the Landdrosts of Districts and the Resident of Simon's Town immediately on receiving information of a crime having been committed in their respective Districts must make a Report thereof to the Governor, the President of the Court of Justice, and the Fiscal, but with a view to expedite the administration of justice two *heemraden* were authorized to act as Commissioners for taking preparatory information in all criminal cases which after the lapse of 24 hours are to be reconsidered and sworn, a reservation being made to the Court of Justice if thought necessary by the public prosecutor to re-examine the witnesses and to confront them with each other at Cape Town. Under these circumstances and when some length of time must elapse before the arrival of the Commission of Circuit in any of the Districts, it occurs that the Landdrost and *Heemraden* after taking the preliminary informations and under the authority of the Court of Justice proceed to the remaining parts of the Process, and then submit it with their proceedings for the final sentence of that Court.

In ordinary cases and after the preparatory examinations have been taken, it belongs to the President of the Court in concurrence with the Public Prosecutor to fix the day of Trial. A subsequent article ordains that no trial shall be deferred longer than the eighth day subsequent to that on which the decree of apprehension or summons has been granted, unless any legal impediment should exist, of which due proof must always be recorded. It is almost unnecessary for us to state

that circumstances frequently occur which render a compliance with these articles impracticable, and that great delay is allowed to take place, more especially in Cape Town, in bringing prisoners to Trial, which has the effect of depriving owners of the services of their slaves and of submitting the latter to long imprisonment, or of inducing the Judges to mitigate their sentences upon that ground.

In the Country Districts it is left to the determination of the Court of Justice whether prisoners who have been either confined or summoned in the Country Districts shall be brought to Cape Town for trial, or whether the further proceeding shall be conducted before the Court of Heemraden, or whether the Trial shall await the arrival of the Commissioners of the Court of Circuit. It is the duty of the Public Prosecutor to frame the act of accusation from the preliminary information collected by him, and which has been taken either before a Commissioned Member of the Court of Justice or of the Court of Landdrost and Heemraden.

The act contains a recapitulation of the principal facts that constitute the crime for which the prisoner or person summoned is declared to be liable to punishment, and concludes with a denunciation of it as "contrary to the dignity of the Government and not to be tolerated in a Country where justice prevails."

A religious adherence to truth is required in framing the acts of indictment, and a strict accuracy in the legal description of the crime. The first of these rules we believe to be generally observed, but where description of crimes is so general and vague as it appears to us to be both in the Roman Law and in the criminal enactments of the more ancient Placaats of Holland, accuracy in the legal description of crimes is unattainable, and the want of it in the accusation leads to an indiscriminate and careless exhibition of proofs.

We believe there is no instance of an indictment having been set aside for error or for uncertainty in the description of the offence charged. A copy of it is required to be furnished by the Prosecutor to the Chief Justice three days previous to the Trial, and to be served at the same time upon the prisoner, and it is also communicated, read over, and explained to Hottentots, Free Blacks, and Slaves, of which proof must appear on the record under pain of nullity of proceedings.

† Upon the communication of the indictment to the prisoner he is required to furnish the Public Prosecutor with a specific list under his signature containing the names of his witnesses, and which is delivered with the proceedings to the Court.

The public Prosecutor is charged with the duty of summoning the witnesses both for the defence and the prosecution, and in consequence of an objection which was made by a defendant on a trial for libel in the year 1825, and which we have had occasion to mention in a former Report, it has been ruled by the Court of Justice that any legal objection on the part of the Public Prosecutor to summon either a portion or the whole of the witnesses named by the prisoner must be discussed before the Court, and before the day of Trial in his presence. The appearance and testimony of witnesses may be compelled and enforced by the process of the Court, consisting of summons, fine, and imprisonment, and they are entitled to receive their expences from the party summoning them, and in case of his inability, from the Colonial or District Treasury.

On the day of Trial, which may be deferred on account of the absence of witnesses or of other reasonable cause, and which is to be recorded in the Proceedings, the act of accusation is read by the Secretary, and the prisoner is then to be informed by the President that the Secretary will put to him the questions exhibited to the Court by the Prosecutor, and which are subject to its correction, and such other questions as the Court shall deem requisite.

The prisoner at this stage and before he gives his answers to the interrogatories is allowed to propose any exception which may tend to impede the progress of the Trial, such as the want of jurisdiction in the Court, or another prosecution for the same offence either pending or concluded, and he may appeal against the decision of such question without interruption to the Trial which proceeds as far as judgment, which is then deferred until a decision is given upon the exception. If no such plea be interposed, the answers of the Prisoner without oath are taken to the interrogatories of the Prosecutor, and which may embrace all circumstances relating to the accusation and resulting from the preparatory examinations. The prisoner's answers are read over to him distinctly, and he

is at liberty either to confirm or to propose alterations in them. He may also be interrogated a second time at his own request, or in case new matter should arise, of which there was no previous knowledge. The interrogatories addressed to a prisoner begin with an inquiry respecting his name, birthplace, abode, and profession, and then proceed after this form: "whether he must not confess himself to be guilty of the facts: as well as of the crime as charged in the act of accusation?"

In case of his refusal to answer the whole or part of the interrogatories put to him, in doing which he is denied the aid of an advocate, he may be punished as for contempt of court with imprisonment, and the Trial nevertheless proceeds.

But if in his answers he confesses both the fact and the criminality of it, and if his confession is supported by any evidence of the crime or "*corpus delicti*," the Court proceeds to the reading of the preparatory examinations, and the witnesses appear either to confirm or alter their declarations and answer any other questions which the Court may put. The examinations are then declared to be closed, and the public prosecutor is called upon to make his claim and conclusion, or in other words to recapitulate the facts and to claim such punishment as their criminality appears to him to require.

By the Instructions of the Batavian Commissioner, the Attorney General is bound to expedite the different parts of the process, and it is added that after having obtained a complete knowledge of the case, he shall lay open to the Court everything which can plead as well for, as against the accused, without keeping back or concealing anything relative thereto. The spirit of this injunction is not always observed in the addresses of the Public Prosecutors, and perhaps is less necessary in those which are delivered in Cape Town where the prisoners have a right to the assistance of an advocate *pro Deo*, but upon the Circuit where the Landdrost is prosecutor and whither the advocates have not hitherto proceeded, the prisoners are exposed to the full weight of local influence and to the effects of their own unassisted ignorance.

The prisoner may make his defence against the claims of the Fiscal either verbally or in writing, and when he has concluded the Court proceed to deliberation and pass judgment.

If on the other hand the prisoner or accused person should deny the act charged, or the criminality of it, or both, the trial proceeds first by the re-examination of the witnesses whose preparatory declarations have been already taken and by that of others who may have been named by the Prosecutor and prisoner. The mode in which preparatory informations are taken by the Heemraden in the districts in pursuance of the articles of Instruction to which we have before alluded was regulated by a resolution of the President and Members of the Court of Justice in the year 1820, which provides that in the investigation of crimes of a higher Jurisdiction than that which was assigned to the Landdrost and Heemraden, after the usual interrogatories have been put to an accused person respecting his name, place of abode, and profession, and answered, the next shall be conceived in general terms, and whether he is guilty of the crime with which he stands charged, and that in case he denies the same either wholly or partially, the examination is to be stopped, but in case he fully acknowledges his guilt, he is to be questioned as to the circumstances and the previous examinations are to be read and confirmed, and in both cases the Landdrost is to address himself to the Full Court, transmitting the documents and information for the purpose of receiving further instructions for commencing the Trial or for postponing it until the arrival of the Commission of Circuit. In other respects the same forms of proceeding are required to be observed by the Landdrost and Heemraden in the investigations as are prescribed in the Crown Trial, and we believe, that, in the subsequent proceedings when authorized by the Full Court, these Courts adhere as far as they are able to the same rules. It is to be observed that no access is allowed to a prisoner under confinement before Trial until he has made answer to the interrogatories put to him by the Fiscal and the Court. He is then for the first time permitted to employ and communicate with an Advocate to assist him in the interrogation of the witnesses, to discuss points of law, and to make his defence, and in case of poverty or insolvency duly established by proof an advocate is assigned to him pro Deo.

A general rule is laid down in the Crown Trial that in giving a judicial decree or passing any definitive sentence, no regard

shall be paid to evidence which is not upon oath, and we believe that this rule is adhered to except in the examination of Slaves, Hottentots, Free Blacks, and Prize Apprentices, and in the reception of certain documentary evidence or certificates given by official persons in the discharge of their functions, and to the due performance of which they have been sworn on their entrance into office, or medical certificates or "judicia medica" upon the inspection of wounds or corpses by the Medical Officers of the Districts, such documents being considered as Public, entitled to full credit, and not requiring further proof.

With regard to the testimony of witnesses, we have the authority of the President and Members of the Court of Justice for stating that previous to the establishment of the Crown Trial in the year 1819 it was not customary to administer oaths to Slaves, Hottentots, and persons of similar condition, on account of their ignorance of all religious obligation, and that altho' the evidence of such persons was and had been received by way of information, and not of proof, except where it was confirmed by other circumstances, yet that this usage was not conformable to Law, and that consequently such evidence had been at all times open to objections to credit, or as they are technically called "reproaches." It having been perceived that this custom interfered with the literal acceptation of the rule laid down in the Crown Trial, which would seem to require the rejection of all evidence that is not given upon oath, the Court resolved and declared that when in future the testimony of Hottentots and Slaves should be offered in the course of judicial proceedings, a previous examination should take place as to their knowledge of religious obligation, and of future rewards and punishments, and that if the Court should be satisfied of their competence upon those points, they should be sworn, reserving nevertheless to the Court the right of receiving their testimony even without the sanction of any religious obligation whatever. This resolution has since been observed in civil as well as criminal proceedings. Hottentots and Slaves when found not to be sufficiently instructed have been allowed to give their evidence, after being admonished to speak the truth, and Mahommedans, after being sworn in Court by their own priests.

By a proclamation that was issued for the treatment of Slaves in the year 1823, it was declared that the evidence of a baptized slave should be received in the same manner as that of any other person, but this clause has not been held to render the evidence of such slaves admissible against their masters, or to take away the objection to credit termed "the reproaches," to which such evidence is liable.

By the 39th clause of a later Ordinance issued on the same subject, it is declared that slaves are admissible witnesses in all civil and criminal proceedings (except in civil suits where their owners are directly concerned), provided they are sufficiently instructed in the principles of religion to understand the obligation of an oath, but this proviso is not to affect the right which the Colonial Courts of Criminal Jurisdiction possessed at the time of passing the Ordinance, of admitting their evidence, nor is the latter to be exempt from the other objections to credit to which it would be liable if they had been of free condition.

That this right was exercised by the Criminal Courts antecedent to the date of this proclamation, we have the respectable authority of the President and Members of the Court of Justice for asserting, although the consistency and duration of the usage by which it is professedly sanctioned has by some persons been deemed inadequate to give it the force of law, or to sanction the exception which it makes to the general rule of exclusion created by the Roman Law to the testimony of Slaves, and especially when given against their masters. His Majesty's Fiscal, who admits the exceptions to the general rule which that law makes in occult cases of great atrocity or of importance to the State, and in those in which other proof cannot be procured, considered that the evidence of a baptised slave, tho' admissible by the practice of the Colonial Courts, would be open to the objections to credit which have always accompanied it, and which are derived from the relation of master and slave, and the feelings which that relation has a constant tendency to create.

Where the practice has existed of admitting the unsworn evidence of Slaves and Hottentots, and of leaving its credit to be estimated by the Court according to the degree of confirmation which it receives from the evidence of one competent

witness, or facts proved aliunde, it becomes difficult to affirm that the rule of the Roman Law has been strictly observed in criminal cases, which requires the concurrent testimony of two witnesses above exception to constitute full proofs of the crime charged. The principle however of admitting the evidence of one witness supported and confirmed by circumstances is recognised by one of the writers on the Dutch Law, and many of the criminal prosecutions in the Courts of the Colony would have failed, if it had not been applied. Objections to evidence however are not made on the Trial, or when the witnesses come to be sworn. Those who have given their depositions are first called, and the oath is administered by the President of the Court to each of them or an admonition "to speak the truth, the whole truth, and nothing but the truth," and we may be allowed to add in a very solemn and impressive manner.

The previous deposition of each witness being read over to him, he is desired to state whether he confirms or alters it, and after a record is made of his statement, the prisoner or his advocate is allowed to suggest any questions through the Court to the witnesses, who are subject also to the cross-examination of the Prosecutor, or to such further questions as the Members of the Court may put to them, and which the latter are at liberty to do at any time previous to the close of the Trial, provided the parties are present. After the examination of the witnesses is closed, and no further investigation is required, the Court makes a decree to that effect, and if it be satisfied that the prisoner or person accused is innocent, it may accompany the decree with an order for his liberation and absolve him from all prosecution for the crime charged. If again, the prisoner should not have confessed the crime and sufficient proof has not been produced for condemning him, and there should be no probability of obtaining it within a short period, the Court may give a decree of provisional liberation on security for personal re-appearance when required, but if no further evidence should be obtained or offered by the Prosecutor in the space of twelve months, the Court by its final sentence will proceed to declare his acquittal. On the other hand if the Court is of opinion that the evidence brought forward is sufficient to convict the prisoner, the Public Prosecutor is

ordered to make his claim for the punishment, to which the prisoner's advocate replies, and the Public Prosecutor sometimes makes a rejoinder. The Court then proceeds to deliberate and pronounce sentence, under an obligation however which extends even to the time of executing it to receive any evidence which may be found to exculpate the prisoner, provided it appears that the application is not made with a view to impede the course of Justice.

We should observe that after the preparatory examinations are taken and concluded, the proceedings in criminal trials are conducted in open Court, a benefit for which the Colony is indebted to a proclamation issued by Governor Sir John Cradock.

The session of the Court may be adjourned from day to day, or to a more distant one, for reasons specified, which together with every act of the Court as well as the questions and answers of the witnesses must be taken down and recorded by the Secretary or by the Head Clerk who accompanies the Commission of Circuit, the original records being transmitted to Cape Town and deposited in the office of the secretary and registrar of the Court of Justice.

This manner of recording the evidence tends greatly to protract the proceedings, but as we have not found that it is either the practice or the duty of the Judges to take notes during the Trial, the expediency of making an official record of the acts and evidence is apparent.

At Cape Town a prisoner under accusation enjoys the benefit of professional assistance, but in consequence of the regulation to which we have adverted prohibiting all access until after his answers are taken to the interrogatories of the Prosecutor (which is in fact the day of trial), this benefit is much diminished, and the prisoner's advocate proceeds to the examination of the witnesses, and frequently to make the defence with very little knowledge of the points to which his attention is so immediately called. It is permitted to a person accused to make his own defence, and by an article of the Ordinance of Philip the 2nd, the utmost latitude is to be given for that purpose, unless it should appear that the defence is clearly founded in calumny and falsehood.

We do not think that any disposition has been shewn by the

Courts to restrict this privilege, and in more than one instance we have thought that it was greatly abused and not sufficiently controlled.

Under a system of proceeding however which admits great latitude of interrogation and inquiry, and in which hardly any rules exist for the regulation of it, the Courts have felt that except in cases of libel it was more consistent with the object of criminal justice to give a wide latitude to their investigations than to attempt to circumscribe or interrupt them. We should add that this feeling has been more manifest in the proceedings before the full Court than in those which have taken place before the Court of Circuit, or before the Commissioned Heemraden when qualified by the former to receive evidence and to take proofs in cases of the highest importance.

The form of proceedings in the trial of misdemeanours is prescribed in the 3rd section of the Crown Trial. We have already noticed the various persons to whom the prosecution of them is committed, and they have authority either upon direct complaint of individuals or otherwise to give information of it to the person accused and to make out an accurate list of the persons who can give evidence, at the same time if the case should be susceptible of amicable arrangement without prejudice to the rights of Government, the Public Prosecutor is bound to use his best endeavours to effect it, making a record either of his failure or success. In this attempt he is also followed by the Court.

If the matter of complaint should be of a nature to admit of no delay, and cannot be adjusted, the parties and their witnesses may be summoned to appear immediately, but if it should not be pressing, he is required to give 24 hours notice of attendance to the parties and their witnesses. If the proceedings are founded upon a complaint, the individual making it is called upon to state the circumstances to the Court, and witnesses are heard in support of them; the person accused then makes his defence and produces his witnesses, who as well as those of the Prosecutor are subject to cross examination. If on the other hand the accusation is made by the public Prosecutor, he submits a statement of the circumstances to the Court, but neither in the one case nor the other is the person accused required to answer any other question than that of

guilty or not guilty, or such as may tend to elucidate his defence, and these he may decline.

A summary record of the proceedings is made, and the declarations of the witnesses are taken down by the Clerk, and although they may be adjourned from day to day for reasonable cause, yet brevity both in statement and decision are recommended in the Trial of cases of this nature. The prosecution of cases of revenue is conducted in the same manner.

The Practitioners at the Bar are not permitted to act in the proceedings we have just described, but the party accused is required to defend his own cause in person, unless prevented by old age or infirmity, when upon special application to the Court he is allowed to appoint an attorney.

It is not considered necessary to take previous depositions or preparatory information on oath in misdemeanors to justify the issue of a summons to personal appearance either by the Public Prosecutor or by the party complaining, but in the latter case the complainant is to be considered a private prosecutor and subject to all the consequences of the Prosecution.

The cognizance of complaints and misdemeanors arising in Cape Town was directed by the instructions of the year 1804 to appertain to two Commissioned Members of the Court of Justice, but the delays which occurred in the prosecution of them arising from the miscellaneous nature of their judicial occupations led to a division of their duties in 1817, and from that period one Commissioner appointed in monthly rotation has taken cognizance of them. This arrangement not being found adequate to meet the increase of business, connected as it was with that of taking preparatory informations in cases of a graver kind and the other ordinary business of the Court of Justice, it was at length determined to appoint one Commissioner of the Court for this especial purpose, by which the delays and inconvenience which had been experienced under the former system have been in a great degree obviated. The mode of proceeding in this Court is required to be summary, but to the English part of the Community it does not appear to be satisfactory. The statements of the complaints are vague and general, and the technical descriptions of them even when given in writing convey no adequate explanation

of the acts which the defendant is summoned to answer. The very defective system of interrogation which prevails in the higher courts is not without its influence in this, and the art as well as the benefit of cross examination is lost, more from the want of experience in its application than of any disinclination to investigate the truth or to administer impartial justice.

The course of proceeding prescribed in rehearing and appeal against criminal sentences does not materially differ from that which we have just described. Notice of either must be lodged with the Secretary of the Court within 48 hours after the sentence has been pronounced, and the sum of 25 rixdollars must be deposited, which is liable to forfeiture in the event of the sentence being confirmed or the rehearing not being duly pursued.

The applicant exhibits to the Court a copy of the records of the proceedings, and states through an advocate verbally his grounds of error and grievance, and new evidence is not admitted except by leave of the Court and when the party producing it was not aware of its existence, or could not have produced it in the Court of first instance. The respondent then replies in support of the sentence, and by permission of the Court the parties may be heard in rejoinder and sur-rejoinder.

Appeals from sentences of the Court of Justice or of Circuit to the High Court of Appeals must be noted within five days from the date of the sentence. The appeal is lodged by leaving with the Secretary and Registrar a certificate of the Secretary of the Court below that the appeal has been duly noted against the sentence and by delivering a copy of such certificate to His Majesty's Fiscal. If the Court is of opinion that the appeal is admissible, a precept is issued to the Court of Justice directing it to return a copy of the proceedings. On the eighth day after lodging the appeal, the appellant's advocate is to bring in his case, setting forth his reasons for appealing, and the same term is given to His Majesty's Fiscal to reply, and in cases where he is appellant against a criminal sentence he is allowed to rejoin. The arguments of the advocates have always been required to be addressed to the High Court of Appeal in writing, and in the English Language, both in civil

and criminal cases. After the opinions of the assessors have been given, the sentences of the Court are promulgated and read in open Court by the Secretary in the presence of the Governor.

Costs and Fees.

Every sentence in a criminal process which contains a condemnation to punishment is accompanied with a condemnation in costs and expences incurred, which are however not exacted from the slaves or their owners and not generally from Hottentots or Free Blacks or poor persons in cases of crime or offences of a public nature, and if slaves are returned to their Masters after trial no fees are charged by the Public Prosecutor, but the Masters are liable to reimburse the Colonial or District Treasuries for expences of removal, subsistence, and medical attendance.

Public Prosecutors are at the same time authorized by an article of the Tariff which was sanctioned by the Acting Governor Sir Rufane Donkin in the year 1820 to charge the Prisoner or Defendant with double the amount of fees allowed to proctors, and the same fees that are allowed to advocates, in cases liable to public punishment, and in minor offences and misdemeanors they are allowed to charge the fees set forth in the Tariff of 1817, and which was republished in 1820.

His Majesty's Fiscal as well as his deputies prosecuting before the Courts at Cape Town are now prohibited by the 8th clause of an Ordinance issued in the month of October 1825 from taking any fees or shares of fines arising from criminal prosecutions, both of which are ordered to be carried to the account of Government and paid into the Colonial Treasury.

Previous to this period the Fees arising from the prosecution of misdemeanors and complaints were allowed by the Fiscal to be received by one of his clerks, who conducted these prosecutions before the Commissioned Members of the Court and who now conducts them before the Permanent Sitting Commissioner. The very low rate of salary at which he was and still is paid, and the multiplicity of his other occupations in the Fiscal's office certainly justified this indulgence, but from the facility that was given by the wording of a supplementary article of the tariff, of adding charges which were

analogous to those that were specifically enumerated, it has occurred that the fees so charged together with those allowed to the Commissioned Member, Secretary and Messenger have amounted in a case of common assault to the sum of 41 rixdollars or £3 1s. 6*d.* Sterling, and in the Country Districts we observed that the charges of the Messengers which are proportioned to the distance they have to travel raise the amount of costs in this description of causes considerably higher, while we have reason to doubt whether the bills of costs charged by the Secretaries of the District (who are the Public Prosecutors) are duly taxed by the Landdrost and Heemraden as they are required to be before the payment of them is exacted, and we regretted to find that the practice had not been observed at Cape Town.

Fees are allowed in criminal prosecutions for the attendance of the Commissioned Members of the Court of Justice or of Landdrost and Heemraden, and the respective Secretaries in the collection of preparatory informations, holding inquests, and other legal inspections and for trial of minor offences at the rate of two rixdollars or three shillings sterling per day when acting at the places of their residence, and four rixdollars or six shillings per day when acting beyond it, but not in cases tried before the full Court of Justice. The fees allowed to the Secretary of the Court of Justice are received by one of the Clerks in his office and paid over to the Receiver General.

The costs of inquests and of inspections performed by the Commissioned Members of the Court of Justice are defrayed by the public Treasury, and in the Country Districts by provisional payments out of the District Chests, and the accounts of the expenditure (which for carriage hire is considerable, especially at Cape Town) are subject to the revisal of the Landdrosts and Heemraden, and ultimately to that of the Colonial Auditor. Fees are not allowed to the surgeons appointed for each District, and who receive annual salaries, when called upon to attend inspections, but if they are prevented from giving their attendance, other practitioners are called in and compensation is allowed for their time and trouble.

Having thus submitted to your Lordship at some length the various sources from whence the criminal jurisdiction of the Colonial Courts is derived, and the regulations by which their

proceedings are guided, we have now to explain the means by which we propose to assimilate them to the forms and practice of the Criminal Law of England.

We have already had the honour to state our reasons for adopting the principles and spirit of that system as a basis, in preference to any modification of the Dutch Law, and we shall now offer a very few observations in support of the view we have taken of it.

That it was the intention of the Framers of the Regulations called the "Crown Trial" to assimilate the Criminal Process as nearly as they considered practicable to that of England, is apparent from the opinion which the learned person who took the lead in that work had given in the preceding year upon a question that was referred to him, and which we will here beg leave to quote, as explanatory of more than one of those points upon which we have ventured of the English Law. "For the rest I have not the smallest hesitation to acknowledge that if the uncertainty of punishment to be inflicted for crimes committed in this country be considered as a real imperfection in our Criminal Law, our mode of proceeding in criminal cases considering its uncertainty is also very defective, and in its practice frequently leaves room to delays and vexations which not only according to the more liberal spirit of the English Criminal Jurisprudence, but even according to general principles of justice, I conceive, should not be suffered any longer to stain our Colonial Code. This point is of real importance, and becomes more so in proportion to the greater influx of British Subjects into the Colony, and I have during my last immediate connexion with the administration of justice, whenever an opportunity offered, incessantly expressed my concern and anxiety on that head as well to His Majesty's Fiscal as to the Members of the Court of Justice, recommending the propriety of approximating our Colonial Practice in criminal matters as much as possible to the spirit of the English Law."

After ascribing to the learned person whose opinion we have quoted, full credit for the sincerity of it, and for a zealous wish to improve the Institutions of his Native Country, we should feel that we did him injustice if we merely asserted that the regulations of the Criminal Trial which were published in the following year fell short of the principles upon which he

professed to model them, or imputed to him alone the causes of their having failed to reconcile the criminal practice of the Colony even in its improved state to the feelings of Englishmen or to the spirit of English Jurisprudence. A nearer approximation to it than that which the Crown Trial exhibits was necessary to give full effect to that excellent institution of the Circuit Courts introduced by the Earl of Caledon and the publicity of their proceedings which was effected more recently by Lord Howden. More especially we have to notice the loose grounds upon which criminal arrests and searches have continued to be made, altho' encumbered with forms which appear to us to have been ineffectual for the purpose of protection, while they were productive of mischievous delay, and while the invidious distinction between the two classes of the population, which was authorized in the search and abrupt apprehension of persons not burghers, and which has been equally extended to the search of their dwellings, affords further proof of a great departure from the principles of English Jurisprudence, and for which we do not admit that any necessity existed, altho' it is possible that in the earlier periods of the Colony the coloured and Mahommedan Classes of the population comprised several persons whose characters may have rendered them subjects of peculiar vigilance and restraint; and we have observed, that at the present moment the class of Mahommedan Free Blacks is always regarded as affording encouragement to the vices and the crimes of slaves.

The principal objection however to which we think the criminal process is liable consists in the attribution of the whole of the Judicial functions to a body of men not sufficiently instructed in the Law to give weight and respectability to their decisions, yet too slightly distinguished or removed from the Ordinary Class of the population to be exempt from the suspicion of local or popular influence.

From the mode that has been adopted of taking the evidence in several cases of a grave nature before the Landdrost and Heemraden, the valuable opportunity is lost to those who are to decide upon it, of appreciating the credit of witnesses by observing the manner in which they give it, while from the reserve maintained by the Judges during that part of the proceeding which is public, and the want of any summing up

of the evidence in Court, no opinion can be formed of the circumstances by which their decision upon the guilt of the persons accused has been guided, or the justice with which the degree of punishment is apportioned.

One of the great benefits therefore which attend the publicity of Criminal Trials in England is lost to the People, and is limited to the exposition which is afforded to the Governor by the Secretary of the Court in transmitting to him the sentences which require his "Fiat" for execution.

It is almost unnecessary to add that this system of criminal procedure altogether excludes any portion of the people from that participation in the performance of a public duty which as it involves the interest of all, should in turn become the duty of all, and from that degree of instruction in the rules of civil conduct which is best conveyed by the public and open application of them to the events of common life.

With regard to the examination of witnesses in Criminal Trials, we deem it no injustice to those concerned in it to observe that the plainest rules for conducting it are either unknown or neglected, a subject more to be regretted on account of the general laxity of witnesses in their Declarations even when taken on oath, and their dexterity in evading questions which have a tendency to elicit truths which may be displeasing to them.

We will now proceed to notice the alterations of which the principles and practice of the Criminal Law of England may be susceptible in the adaptation of them to the various classes of the population, and which will be found to apply to the mode of criminal proceeding and to the punishment of crimes rather than to the circumstances which characterise them, and which in most systems of penal jurisprudence are found to be nearly alike.

Punishments.

Your Lordship will have perceived that the offences which are made subject to capital punishment by the Dutch Laws are punished in an equal degree by those of England, except that of stealing implements of husbandry, which from their exposure in the fields were considered to be entitled to special protection in the agricultural and closely settled provinces of

Holland, and the modifications of similar enactments applying to the theft of cattle and sheep when committed in both countries have arisen not so much from a difference of principle as a difference in the Judicial practice of the Tribunals of the Mother Country and those of the Colony. Before however we recommend the adoption of that principle in the latter, we would remark that the difference of the circumstances of the inhabitants of each may be of some weight in apportioning the measure of protection as well as of punishment by which the Judges are in future to be guided in passing sentence upon the stealers of sheep and cattle, which constitute a large portion of the property of the inhabitants of the Eastern and Northern Districts. Whether from want of capital, want of industry, or want of good materials, or a combination of all three causes, the stock of the inhabitants of the Colony occupying widely extended farms is much exposed both to the effect of weather and to nocturnal depredation, for the kraals or pens in which they are enclosed do not afford protection against either, being formed only of the branches of thorny shrubs. Instances also occur in some of the Districts of proprietors of herds of cattle and sheep who possess neither land nor fixed domicile, and who living under the shelter of their waggons procure temporary pasturage by resorting to the portions of unappropriated or as they are termed "aceroached" lands, or in the interior of the Colony traverse the Karroo plains in search of herbage.

The Stock of the Colony has thus increased while its value and in all probability the care of it has proportionally diminished. It therefore becomes a question worthy of consideration whether the extreme severity of the law is to be called in aid to deter or to punish violations of property, which might be prevented by the greater activity, the closer settlement, or the better directed industry of the inhabitants. Independent of the reasons which will be found to apply to the peculiar condition of the lower classes of the population amongst whom these crimes are the most frequent, we cannot recommend that the offences of cattle sheep and horse stealing should be capitally punished except in case of being repeated under circumstances which denote a disposition or habit of subsisting by plunder.

Capital punishment has very rarely been awarded by the Tribunals of the Colony to the offence of burglary, and indeed

it has not frequently been committed in those buildings which by the Law of England have been held to be deserving of its peculiar protection, but in those which are used as stores detached from and unconnected with the principal dwelling house.

Little vigilance is used in Cape Town and in the principal villages in guarding against these depredations, and we cannot recommend that a habit of carelessness or a want of ordinary precaution should be encouraged by adding to the severity with which the aggressors even of a dwelling house should be made punishable, except in cases where violence to the family is used. The thefts committed in houses are generally effected by the connivance of the slaves of the owner or occupier with others in connection with them, but are not frequently attended with violence or bloodshed. Subject therefore to the same exception as in cases of burglary, we should recommend that no persons convicted of stealing property in any situation or of any value (except from a ship in distress) should be capitally punished, but that they should be subject to the same discretionary punishments as are assigned to the larcenies enumerated in the 53rd and 54th Chapters of the 4th Geo. 4th.

As we have adverted to the state of the Law and regulations respecting the pursuit and capture of vagabond Hottentots, Slaves, and Bushmen, and the effects which the system has had in encouraging a wanton destruction of them by the Boors and others, it may be only further necessary to urge the expediency of applying the principles of the English Law in the restraint and punishment of acts of unnecessary violence, in the apprehension of suspected persons, and that the mere fact of a pursuer calling thrice upon a fugitive slave or Hottentot to stand, or even of aiming at his legs, shall not in case of his death be held to dispense with the proof of the necessity of using force for the purpose of taking and securing him.

In the pursuit of the Bushmen the fear of being wounded by their poisoned arrows has been alleged by the Boors as an excuse for taking deliberate aim with guns and fowling pieces with which those of the Frontier Districts are always provided, and availing themselves of their long range are able to anticipate the more uncertain shafts of their adversaries. The laxity with which this excuse has been received has

tended to encourage in the Boors the anticipation of actual danger and to induce them to fire indiscriminately upon men, women, and children when collected together and suspected of having stolen their cattle and sheep, and which in some instances may be ascribable to pusillanimity as well as cruelty.

The crime of maliciously shooting and violently wounding others is one of frequent occurrence amongst the several classes of the population, and is not punishable by the Dutch or Local Law (except in the case of a slave striking or wounding his master) with that degree of severity which a later English enactment has assigned to it, when committed under circumstances which if death had ensued would have constituted the crime of murder. A careful application of this law to the offences we have described and free from any distinction as to the class or condition of the offenders or of the persons wounded, will, we think, be advantageously felt by all in the greater value and respect which it will teach them to attach to human existence with whatever shape or colour it has pleased Providence to endue it.

We have already observed that the crime of forgery is subject to capital punishment only when it consists of the false making and counterfeiting of notes and obligations of a public nature to the injury of the property of the State. Similar documents of a private nature do not enjoy the same degree of protection, and the punishment for forging them is discretionary. From the nature of the material which has been used in the notes issued and thrown into circulation by the Colonial Government, the first of these offences has been more easily committed than detected, and we are not informed that any falsifier of the rixdollar notes has been capitally punished.

The severity of the punishment cannot be said to have had the same effect in the Colony where there is a Public Prosecutor as has been attributed to that cause elsewhere in deterring prosecutions, and the success and impunity with which the forgery of the rixdollar notes has been committed is attributable in a great degree to the ignorance and indifference of the persons through whose hands they have chiefly circulated. We should not be disposed therefore to advise a diminution of the punishment attached to the forgery of the Colonial rixdollars or debentures, when the temptations to commit it

are diminished by the substitution of a better material than that which is now in use, or by the partial substitution of a metallic currency of smaller denomination.

The forgery of deeds and instruments executed in the presence of a notary and witnesses is so open to detection that as long as the inhabitants are permitted to avail themselves of this mode of executing and preserving them we should not think that it will be necessary to apply the same severity of punishment as that which is provided against the forgery of the instruments recited in the Statute of 2nd Geo. 2 Cap 25, with the exception of wills.

The circulation of promissory notes and private obligations has much tended to facilitate the transactions of the inhabitants of the remoter districts with those of Cape Town, where money payments are chiefly effected, as it has also been encouraged by the system which has prevailed of late years of effecting sales upon long credit. The punishment applied at present to the forgery of private notes consists of scourging, banishment, and confiscation, for which we propose to substitute transportation for life. Although the offence of altering or erasing public records is punishable in proportion to the heinousness of the offence, yet there is one species of it for which it may be expedient to provide a special punishment. By a proclamation issued on the 26th April 1816 all slaves then in the Colony were ordered to be registered either at Cape Town or in the Country Districts, and the births and deaths, transfers, and manumissions were also required to be reported, the District Clerks being charged with the duty of entering each transaction in their books and reporting them to the Inspector of the Colonial Registry at Cape Town, where a general registry of all slaves was established. As the wilful falsification of these documents might involve a right both to property in the Master, as well as to liberty in the slave, and as the punishment annexed to it by a clause (42nd) in the Ordinance No. 19 is limited to a fine of £100 sterling and not less than £50, we should recommend that the pains and penalties of forgery created by the English Law should be declared to be applicable to the offence of forging or making any false or fraudulent entry in the Books of registry or of erasing or obliterating them with intent to enslave a person who is free, or to prolong

his term of servitude, or to effect any right or title of a master to the service of a slave, whether committed by the Inspector of the Registry at Cape Town or by the Subordinate Functionaries in the Districts, with forfeiture of office and employment, and incapacity to serve His Majesty in any other, and with similar penalties against all other persons who should be guilty of committing or procuring the commission of such offences, together with forfeiture of right to any slave who may be the subject of the fraudulent entry or erasure.

For the prevention of similar frauds in contracts of apprenticeship, and which are likely to become more frequent as the system is extended of admitting and employing individuals of the tribes beyond the Frontier who are either driven by necessity or are willing to seek subsistence by hiring themselves to the inhabitants within the Colony, it will be expedient to afford them every protection against fraudulent alterations or erasures of the agreements by which their services may be prolonged, and it will be still more important to guard by the most severe punishment against any attempt to enregister or to cause or procure them to be returned or registered as slaves. We have been informed that at present such an offence would be punishable in the Colony under the Roman Law against Plagium, which following the Levitical Law at a later period punished with death the enticement or carrying away of children from their parents or the concealment or fraudulent purchase of any person knowing him to be free, but we cannot concur in the application or the extent of the protection which is ascribed to this law against the fraudulent practices to which we have alluded.

With regard to other crimes which by the Dutch Law are liable to that degree of punishment which is termed "Public," we should observe that with the exception of adultery and concubinage all are punishable by the English Law. The principal difference between the two systems would seem therefore to consist in the duration and mode of punishment assigned by each to crimes of the same or nearly the same denomination, for that of petty theft, which by a very recent ordinance has been declared to extend to the stealing of property amounting to the value of five shillings, is not subject to a more severe punishment than correction in the public

prison and temporary imprisonment, and notwithstanding the vagueness of these terms, their utmost extent would be very far below the punishment which is assigned or may be inflicted by the English Law upon the crime of stealing goods of or under the value of 12*d.*

Before however we recommend the same extent or mode of punishment to be applied to the offence of larceny as declared even by the ordinance to which we have just alluded, or even to others of a more serious kind, it is fit that we should consider the class of population to which it will probably for some time continue to be most generally applied, namely that of the Hottentots and slaves. No instance has (we believe) yet occurred of the transportation to New South Wales of any individual of these classes, and except in the separation that it would occasion from their families, to whom the Hottentots are much attached, the mere act of transportation would not carry with it much of the character or effect of punishment.

It may also be considered inexpedient with regard to persons of free condition who may be condemned for any shorter time of transportation than during life.

The intercourse which has hitherto subsisted between New South Wales and the Cape of Good Hope has not been considerable, nor do we believe that escapes to the latter have hitherto been successfully accomplished by convicts from New South Wales. It is however not desirable to hold out temptations for the interchange of the convicted part of the population of either Colony, or to encourage a return to the Cape of those who have been sentenced to be transported by way of punishment to the other. To transport a slave to New South Wales for a shorter term than that of his natural life might cause an unnecessary interference with the right of property of his Master, unless the Government undertook the risk and the expence of his return and granted a remuneration to the Master. On the other hand the transportation of a slave for life might have the effect of producing in the minds of that class an expectation of eventual escape from their condition of servitude, which might thus be connected with the commission of atrocious crimes.

Some legislative provision will also be necessary to prevent and punish the return of offenders to the Colony before the

expiration of the terms of their sentences, as well as to punish all attempts to rescue them or to effect their escape.

No place more adapted for the punishment of offenders or for their safe custody and employment has hitherto been found than Robben Island, but as transportation for a term of years might be desirably made to a penal settlement under the same government and yet remote and secluded enough to induce a change of condition which might have a salutary effect upon the morals of the convicts, we are induced to suggest to your Lordship the island of Tristan d'Acunha as combining the advantages of a severer climate than that of the Cape with moderate distance, and from its insular and not very accessible position diminishing the chances of escape and the expense of largely providing against it.

We are not aware of any other island in the settled parts of the Coast of South Africa or in its vicinity which would answer the purposes of a Penal Settlement without exposing the persons transported thither to some contact with the savage tribes. Confinement therefore at Robben Island, in the prison at Cape Town, or in the other prisons of the Colony, and employment in the public works for different periods must necessarily be substituted in the mean time, and until some other place is provided as a punishment for those crimes which by the law of England would be liable to transportation for 7 or 14 years, and as a principle of future substitution we should venture to propose that imprisonment with labour for the respective terms of 5 and 10 years should be considered equivalent to transportation for 7 and 14.

The punishment of public whipping and branding even of Slaves and Hottentots we recommend to be abolished. From the mode in which this punishment is inflicted, it is hardly more severe than a private whipping in the gaol, and we cannot think that the presence of one or more of the judges should be required at the execution to determine as at present its extent or severity. Neither do we think that exposure on the scaffold of white men as a mark of degradation, or waving a sword over their heads, or similar punishments of slaves or Hottentots are attended with any beneficial effects either to themselves or to the classes of the community to whom they belong.

The execution of capital punishment on females may with

propriety be assimilated to that of men, but where the punishment is less than capital and inflicted within the Colony, we are not able to recommend any other mode than that of imprisonment in cells completely separated from those of male prisoners. Transportation of female offenders to New South Wales even for short terms may not be attended with the same ill consequences as that of males, and may therefore be adopted except in case of their being slaves.

The public whipping of female slaves having been prohibited by the 13th clause of the Ordinance No. 19, and the punishment of females generally by whipping having been prohibited by an English Statute, we certainly cannot recommend that it should be revived as it regards the punishment of any class of females in the Colony. The domestic correction of female slaves limited as it now is by the same clause cannot be effectual as a punishment for a grown-up woman, and in effect leads to a greater exposure of the person than is consistent with the spirit of the Parliamentary Declaration upon which it was framed, and it may also happen that a punishment intended by the owner to be executed in strict conformity to the limitation of the clause may by accident or by the contortions of the person suffering it reach those parts of the body which render it criminal in the person by whose order and in whose presence it is inflicted.

We should therefore recommend the entire prohibition of the whipping of female slaves, or of striking them with sticks which we believe to have been a more common as well as a more dangerous mode of punishment for domestic offences, and that confinement of the feet in bed-stocks during the night, solitary confinement on bread and water limited as it now stands in the 13th clause of the Ordinance, the use of badges of punishment suspended from the neck and secured by small padlocks, and where the females are employed in field labour, confinement in field stocks not exceeding three hours at a time, should be substituted instead of any kind of corporal punishment.

The punishment of free persons by flogging either in prison or in public, especially for breaches of contract or of the laws of revenue, we cannot recommend upon any principle of public utility or security, and we are justified in this recommendation

by the reluctance which the Courts have shewn to resort to it upon the few occasions that have occurred and in which its infliction was authorized.

The introduction of the Treadmill into the Prison at Cape Town we conceive has provided a more efficient corrective of idleness than flogging, except in the case of young indentured apprentices under the age of 16 years, and we think that no advantage whatever is gained to the public or to the individual by the mental disgrace which the mere publicity of the punishment may inflict.

We have had occasion to notice the frequent resort that is made to the public gaols for the punishment of slaves and Hottentots in service, as well as of the Prize Negroes, a practice which is more frequent in Cape Town than elsewhere, in consequence of the great number of domestic slaves retained in the service of their masters or let out to others on hire. Since the publication of the Ordinance No. 19 and of the regulations by which the domestic punishment of slaves is restricted, we conceive that much of the benefit of these regulations would be lost by continuing a practice which would have a tendency to lessen control over the authority of the Master, and to transfer it to persons in whose hands it is liable to so much abuse as in those of the undersheriffs or gaolers, who receive fees for the punishments so inflicted. Daily returns of them have been made to the Fiscal, and latterly to the Superintendent of Police at Cape Town, but there is no effectual guarantee for the attendance of the undersheriff at the execution, and the practice if allowed to be continued would appear to us to involve the responsibility of Government for the justice as well as the severity of the punishments, over which it possesses no adequate control. We therefore recommend that it should be discontinued, but that the punishment of slaves by the Treadmill under certain limitations may be substituted for it at the request of the master, whose interest in the service of his slave will then form some guarantee against its improper duration. The limit we should propose should be three days within the regulated hours, and the magistrate should not be authorized to apply this punishment for a longer period without investigating the charge against the slave. In all cases the offence of the slave should be stated by the master,

and the authority of the magistrate given for the application of the punishment.

We have had the honor to submit to your Lordship's notice in the earlier part of this Report the principles which have been applied by the Courts of Justice in the Colony in controlling or punishing the abuse of the power which masters and managers of slaves have exercised in inflicting what is termed "Domestic Correction," and the later enactments of the Colonial Government by which that power has been circumscribed.

With reference to the 43rd article of the Ordinance No. 19 which contains these enactments we perceive that the maltreatment of a slave by the Proprietor, not attended with death, is made punishable by fine, imprisonment, banishment, or other discretionary punishment, and the sale of the slave on account of the owner may be compelled by order of the Court, and that where the same offence has been attended with death, it is punishable in the same manner and degree as the crime of homicide.

By the same article also the cruel and unlawful punishment of a slave by any person subjects that person (and of course the owner must be meant) to forfeiture of the slave to the King for the first offence, and by the following article to incapacity to own or superintend slaves for the second. It is not clear whether the word "maltreatment" includes the infliction of punishment, and from the specific forfeitures applied by the two clauses to such punishments as are cruel and unlawful, we are inclined to think that it does not. We have certainly observed sentences of the Courts in which the infliction of cruel punishment on a slave has been described as gross ill-treatment, and visited with severe punishment, but we think that such an application of the term is rendered doubtful by the manner in which it has been expressed, and that both in the first and especially in the last clauses the word punishment should be inserted.

Reverting to the subject of those punishments which are inflicted by judicial authority, we are desirous of briefly noticing that of banishment. It is hardly necessary for us to state that the effect of this punishment is as unequal as the conditions of the parties may be to whom it is applied, and that the

benefit which may be derived from it depends upon the wisdom by which it is adapted to the varying circumstances of each delinquent. It seems to be peculiarly applicable to those who may have contributed by the notoriety or the nature of their offences to awaken the animosity or hatred of the members of a small community, and to whom the presence of an obnoxious individual even in a state of confinement or condemned to pay a pecuniary penalty serves only to furnish fresh causes of irritation and perhaps of vengeance. It would not be difficult, tho' perhaps it is unnecessary, to describe the several cases for which if transportation is not deemed an appropriate or desirable mode of punishment, banishment from the Colony or from one district to another may form one that would be equally beneficial to the Community as to the individual, and would prevent the repetition of offences.

Recommending therefore that fine and imprisonment and the latter with or without labour should be retained as the ordinary punishments of misdemeanors, and that the same power which is given by the Act of the 3 Geo. IV. Cap. 114, to the Courts in England to pass sentence of imprisonment to hard labour either simply and alone, or in addition to any other sentence for the aggravated misdemeanors mentioned in that Act, with the exception of that of entering enclosed grounds for the purpose of killing game or rabbits, should be given to the Courts in the Colony, we think that banishment perpetual as well as limited, and within and out of the Colony, may be also advantageously retained as a punishment applicable to misdemeanors of a higher as well as of a lower class, but especially to those which affect the public tranquillity.

In adverting to the restraints to which meetings, assemblies, and associations of the inhabitants are subject, and to the several instances in which the sanction of Government was either given or refused to them, we observed that the early restraints originated in apprehensions and mistrust, which were not unjustly entertained by the Dutch and English Governments towards a community strongly tainted with the political feelings which agitated the states of Holland in the year 1792, and which were propagated in the remoter dependencies by means of secret Societies and correspondence. The unsettled state in which the Colony remained from that period until the

year 1803, when it was restored to the Dominion of the Batavian Republic and to the authority of persons not wholly divested of their attachment to the ancient order of things, naturally furnished them with grounds for continued jealousy of the disposition of a portion of the inhabitants, consisting of those who had emigrated from Europe in the interval and especially in the early part of it ; but from the general character which they have exhibited since that period we should not say that the spirit of secret association is one against which it is necessary to protect the Local Government by imposing previous restraints upon meetings which are not of a political nature. To association for the purpose of repelling the attacks of the savage tribes, and for taking revenge upon them for acts of plunder either suspected or actually committed, the inhabitants of the Colony, though generally peaceable and well disposed, are at all times too prone. Their association for this purpose or indeed for any other with arms should be strictly prohibited, except under the authority and in presence of the Local Magistrates. In this respect the general liability to be called upon to join in the pursuit of felons which exists by the English Law may with advantage be extended to the Cape. The excesses to which these pursuits give rise will require the greatest vigilance on the part of the Public Prosecutors, and of firmness on the part of the Government, but the liability to personal service when required in the pursuit of plunderers and in protection of property, which is much dispersed and exposed, is a condition of social existence with which at present it is impossible for the Government to dispense, and for which it would be very difficult and expensive to make other and effectual provision.

With the exception of armed associations of this kind, we should recommend that every encouragement should be given to the inhabitants of the Colony to resort to those which have a tendency to diffuse information, whether religious or moral, and to promote a knowledge of those practical arts which in their operation may insensibly diminish the natural disadvantages with which they will for some time have to contend, and which arise from the distance that separates their habitations, throughout the greatest part of the Colony.

With regard to meetings for the purpose of discussing political

questions, we recommend that none should be considered legal or be allowed to take place without the previous sanction of the sheriff of each Province. In case of his refusal he should be obliged to assign reasons, from which an appeal may be allowed to the Governor in Council of each Province, but the parties requesting permission to meet should be bound to state distinctly the objects which they mean to discuss and to adhere strictly to them at their meeting.

PRESS.

We now have to consider whether the regulations which we have recapitulated as constituting the present Law of the press at the Cape are effectual in preventing abuses of it, and are at the same time calculated to afford that degree of freedom which it may be proper and expedient to give to the press in a Colony whose laws it is proposed to assimilate to those of England.

We have already had occasion to notice the propensity to personal slander which exists in the Colony, and the intemperate manner in which opinions are wont to be expressed by the inhabitants respecting each other's motives and actions, and altho' we think it most desirable that a Public Journal should not be allowed to become the vehicle of such feelings, yet we are much disposed to doubt the efficiency of that interference by which it has been proposed to check them, and the moral competence and fitness of a body forming part of the Executive Government to interpose with promptitude and effect in checking animosity which is purely personal, and for the indulgence of which the power which it wields affords no compensation to a party injured. We would further submit the inexpediency of confiding to that body in the event of provision being made for a more efficient and independent exercise of the judicial Functions any portion of those which upon general principles as well as usage are supposed exclusively to appertain to them.

If however these observations are applicable to the power attributed by the existing regulations to the Governor and Council in the repression of personal controversy, we conceive that they are infinitely more so when viewed with reference to

discussions upon the measures of the Local Government and authorities, and that it is as unreasonable to expect a fair or impartial judgment to be exercised by such a body upon the extent to which a journalist has adhered to the terms of his Prospectus, or upon the temper and fairness with which he has discussed public measures, as a spirit of vigilance and alacrity in checking an intemperate discussion or personal allusion which had no immediate bearing upon themselves.

We do not however propose to withhold from the Council the power enjoyed by the Houses of Parliament and Courts of Justice, of calling before them and summarily punishing by imprisonment or fine any contempt of their authority or dignity of which printers may be guilty.

Without further insisting upon the objections to the quarter in which this power over the Press is now vested, it remains to be considered whether a resort to previous restraint upon the Periodical Press at the Cape is necessary for the protection of individuals and the Government against its abuse. It has unfortunately happened that the first approximation which was made towards the establishment of a Public Journal in the Colony occurred at a period in which much discontent had arisen, and when from the measures which had produced it, and from the nature of the Government, any discussion or attempt to trace their origin would insensibly assume a character of personality which, altho' uncalled for at the period and objectionable even under the specious pretext by which it was at first attempted to be disguised, was soon confirmed and inflamed by some injudicious attempts that were made to check it.

In proportion to the progress that is or may be made in the improvement of the Institutions of the Colony, and in diffusing a knowledge of the Laws, this character of personality may be expected to take a more general direction, and instead of indulging itself in bitter reproaches upon past errors or the imperfections of past Institutions, may find subjects of observation more useful and equally profitable in dwelling upon the ameliorations which it has been the desire of His Majesty's Government to introduce, and in recommending a cordial union between the native inhabitants of the Colony and those who moved by the inducements of more liberal Institutions

and attracted by those of a most salubrious climate may be induced to place themselves and their property under British Protection.

Being much disposed therefore to think that the wish which has been expressed by the inhabitants who have signed Petitions for the freedom of the Press proceeds from more commendable motives than those of gratifying a spirit of personal revenge and bitter invective against those who are invested with authority, we do not recommend that any other previous restraint or security should be imposed or demanded from the Editors of Periodical Journals, or from Printers generally, than that which may be available for the purpose of indemnifying individuals for injury which they may sustain by any contravention or violation of the Laws, which as far as they regard writings and publications of every kind we propose to assimilate as nearly as possible both in principle and in respect of punishment to those of England. We are induced to propose this security with a view to the protection of individuals from the slander of publishers whose personal resources may be inadequate to afford it in the shape of pecuniary damages or penalty when fixed by sentences of the Courts of Justice, and who may not be deterred from publishing and repeating their slander by the fear of imprisonment.

Forfeiture of property is one of those punishments which were derived from the Roman Law and constituted a part of the Law of Holland, from the pressure of which in earlier periods the inhabitants of cities and towns frequently endeavoured to provide or obtain relief by clauses in their charters limiting the extent to which forfeiture should be applied in each case.

We are not aware of any instances of a recent date in which this punishment has been inflicted in the Colony, but we do not recommend that it should in future be applied except in the cases and to the extent declared in the 54th Geo. 3, Cap. 145, and to that provided by the 43rd article of the Ordinance No. 19 in cases of cruel and unlawful punishment of slaves by the owner, and upon the same principle we recommend that the incapacity to hold or possess a slave, which was known as a punishment by the Colonial Law and which is declared in the 44th article of the said Ordinance, should be continued.

From the mention that we have made of the various laws that have been enacted for the protection of that part of the internal revenue which was until lately derived from the farm of the Licence for the retail of Cape and Foreign wines and spirituous liquors, it will appear that the heavy corporal punishments provided by the 14th clause of the proclamations dated 30th June 1820 and 22nd August 1821 against the infringements of the farmer's privilege, have been reduced, and a great increase has been made by the proclamation of the 14th November 1823 in the pecuniary penalty attached to the offence of retailing wine and spirits without a license, which now amounts to 3,000 rixdollars or £225 sterling, or double the sum charged for the license, but which we consider too large to be obtained or expected even by the most active informer or prosecutor from the ordinary violator of this Law, while the offence of purchasing wine in less quantities than 19 gallons is punishable with a fine of rixdollars 200 or £15 sterling.

We think that the punishments of imprisonment and hard labour declared by the 18th clause of the last of these proclamations may be properly continued, as they are to be inflicted in default of payment of the fines imposed, but that the amount of that which is imposed for retailing spirits without a license should be reduced to a sum not exceeding one hundred pounds sterling, and the offence of purchasing it from an unlicensed retailer to a sum not exceeding fifteen pounds, one half of which should be declared as payable to the Colonial Treasury and one half to the informer.

Your Lordship will also have observed that the regulations for protecting the revenue levied upon goods imported depend upon enactments which are not adapted to the present state of the Colony or to the enlarged scale of its commercial intercourse, while the establishment of a Custom House at Port Elizabeth and the increased communication which is likely to take place (if properly encouraged) between that port and Mauritius, and hereafter with the ports of Eastern Africa, will require increased vigilance on the part of the officers in preventing all infractions of the laws which prohibit or regulate the introduction of slaves.

We therefore conceive that it will be necessary to revise them

and to repeal the former enactments including the Port Regulations, which contain some very heavy penalties against Captains of vessels frequenting the port, and which appear to us to be more adapted to the jealous and repulsive spirit of the Dutch Commercial Code than to the interest of a Colony, the geographical position and the produce of which strongly recommend an opposite system, and one which will attract to the free ports which it possesses and encourage the continuance there of the vessels both of Great Britain and of foreign states.

Amongst the most objectionable articles of these instructions we may notice the third, enjoining the delivery of private letters and accounting for every individual on board, under a penalty of rixdollars 1,000 or £75 sterling. The 15th also, by which two or three days notice of sailing is required, under a penalty of rixdollars 500 or £37 10s. sterling.

The rules and regulations for the import and export of goods which have been introduced into the Act of the 6th Geo. 4. Cap. 114, and are contained in the 15th, 16th, 18th, 19th, 20th, 24th, and 25th clauses of that Act, appear to us to be applicable to the Cape as far as they regard the protection of the Revenue, and we conceive that the clauses from the 50th to the 63rd inclusive are equally applicable, but with the exception of arms, gunpowder, and warlike stores imported in private vessels and not entitled to the protection that is given by the Act of the 33 Geo. 3, Cap. 2, and by orders issued by His Majesty in Council in virtue of that or other acts, we should not recommend the forfeiture to extend beyond the goods prohibited and the boats, carriages, carts, and horses, or cattle by which it is attempted to land and convey them.

Pardon.

We have taken occasion to notice in our Report on the administration of the Government the power of pardon which is entrusted to the Governor by his Commission and Instructions, and on later occasions that which he has exercised under the Crown Trial. It was our intention in the recommendation which we then had the honour to make to give a character of greater deliberation to the exercise of the High Prerogative of Mercy than the later practice seems to have afforded, and at

the same time to provide that advice which would be desirable when that of the assessors in the Court of Appeal should be withdrawn. The power with which the Governor of the Colony is invested of granting reprieves in cases of High Treason and murder until the pleasure of His Majesty is taken, and of pardoning other offenders, has upon the whole been found beneficial, and considering the great difference that exists in the circumstances of the offenders and the peculiarities of their civil condition, we are disposed to recommend its continuance in the shape in which the power is conveyed by His Majesty's Commission and Instructions, and not by the article of the Crown Trial to which we have so often had occasion to make reference. We also think that the power may be more properly and beneficially exercised by way of pardon absolutely or with certain conditions annexed, in the performance of which it can alone be effectual, rather than by way of remission of punishment, but that it should only be exercised in cases where the Court alone or the Court and the Jury have concurred in recommending mercy to be shewn to the prisoner. We think that this important branch of the Royal Prerogative should be exercised by the Governor and Lieutenant Governor with the advice of their respective Councils, and in cases where they shall resolve to extend mercy to any offender who has received sentence upon condition of transportation or banishment for life or a term of years, the Judge or Judges by whom such offender has been tried or any other Judge of the Province should be authorized to allow the benefit of a conditional pardon and to make an order for the immediate transportation or banishment of the offender.

We also should recommend that the article of His Majesty's Instructions by which the power of Governor Lord Charles Somerset in remitting pecuniary fines was limited to the amount of ten pounds sterling should be altered, and the power extended to one hundred pounds, but that in all cases it should be exercised by the Governor with the advice of his Council.

Your Lordship will not fail to have noticed the irregularities which have taken place under the excuse of custom in the removal of slaves from Robben Island to Cape Town and their employment in the service of the officers of police. We shall revert to the mention of this subject in our report upon the

gaols, but we would again call your Lordship's attention to the effect of pardon or of remission of a criminal sentence upon the right of a master to his slave who has been condemned to suffer death or perpetual banishment, or to work in chains for life. Without troubling your Lordship with a recapitulation of the argument raised upon this question by the high authorities to whose consideration it was submitted, or their different mode of interpreting certain doubtful texts of the Roman law, and inclining to the opinion that the right of dominion of a master over a slave does not pass to the State by a sentence to death or punishment of the slave for life, we would suggest the expediency of allowing some pecuniary compensation to the master payable from the Treasury of the Province and to be fixed by the valuation of two persons on oath, one to be appointed by the Attorney General and another by the master, and in case of difference in their valuation the Chief Justice to name an umpire. We would except from this compensation the masters of such slaves as had been condemned for high treason or for violent attempts against their lives or persons or upon those of their families as well as those who had declined giving information against their slaves when it was in their power to do so, or who had in any wise thrown impediments in the way of bringing the slaves to trial or to conviction. We are certainly aware that a practice prevails at the Cape to which we should by no means advise that encouragement should be given, of purchasing slaves of bad perhaps of infamous character for a low price in Cape Town, and of removing them to the remote parts of the country, and it may be justly apprehended that the prospect of obtaining a fixed sum or the appraised value of such a description of slaves when condemned to death or to punishment for life upon his conviction might produce a baneful indifference to their conduct, and thus be the means of introducing the worst characters into those parts of the country in which there exists the least control over them. On the other hand there is reason to apprehend a greater evil in the suppression of evidence of atrocious crimes by masters of slaves when they know that it will be attended with a total loss of their services or of the value they may have given for them.

CONSTITUTION OF THE NEW CRIMINAL COURTS.

We have had the honor to recommend in a former report that the Colony should be divided into two Provinces for the purposes of civil government and judicial administration, and we now proceed to detail the means by which we propose to accomplish the last of these objects as far as it regards the criminal law.

We recommend that two Courts of criminal jurisdiction should be established, one in the Eastern and one in the Western Province, which may be denominated the High Courts, and possessing authority and jurisdiction in criminal matters similar to that of the Court of King's Bench in England. The Court of the Western Province should consist of the Chief Justice and the two Judges of the Lower Court, that of the Eastern Province of the Judge of the Civil Court, and all the Judges should be named in the Commission of the Peace of the two Provinces.

In the trial of criminal cases arising within the jurisdiction of Cape Town and County, the Chief Justice and one Judge or the two Judges of the Lower Court at least should always assist, and one of them in rotation and the Judge of the Eastern Province should proceed at two periods of the year to be fixed by the Governor and Lieutenant Governor to hold Courts of Oyer and Terminer and general gaol delivery in the different Counties of each Province. The Governor and Lieutenant Governor should also have authority to issue special commissions to one or more of the judges to hold such courts at other places and times whenever a more prompt interposition and administration of criminal justice is required than that of the ordinary period of the circuits. Although we would recommend that in general all criminal cases should be tried within the limits of the County in which the criminal acts have been committed, yet it will be expedient to give authority to the criminal courts of each Province with the approbation of the Governor and Lieutenant Governor to take cognizance at the respective seats of judicature of any capital cases which may arise in any of the Counties of their respective Provinces, and to cause the trial of them to be proceeded in without waiting

for the Circuit Court, when it may appear that the attendance of the witnesses can be obtained at the respective seats of judicature without great inconvenience to them or expense to the Crown, and we also recommend that the facility which has been afforded by the late Act of the 7th George 4th Cap. 64 for the trial and punishment of accessories to felonies, for obviating the difficulties attending the trial and proof of offences committed near the boundaries of Counties or during journeys, should be declared to be applicable to such offences committed in the Counties of the two Provinces of the Cape.

PIRACY COURT.

We further recommend that a special commission should issue directed to the Governor or Lieutenant Governor and three other persons consisting of the Chief Justice for the time being and one or other of the Judges of the Lower Court and the Senior Naval Officer in command upon the station to try piracies, felonies, and all other offences committed on the high seas or within the jurisdiction of the Admiral on any parts of the coast of the Colony, agreeably to the directions of the 46 Geo. 3, Chap. 34, and that in conformity to the provisions of the 7th Geo. 4, Chap. 38 any one of the Commissioners or any Magistrate in the Commission of the Peace should be authorized to take informations of such offences on oath, and to commit the offenders to prison or to take bail when such a course may be proper.

With reference to the doubts which have been entertained respecting the liability of persons serving in His Majesty's Forces to the criminal jurisdiction of the Local Courts for crimes committed by them and for which they would be liable to be given up to the civil power in England, and more for the purpose of removing all pretence for entertaining such doubts in time to come than of satisfying any which could be reasonably entertained upon the subject at present, we should conceive that a declaratory clause of the import we have just stated might be advantageously introduced into the charter.

The sessions of the High Criminal Courts in each province should be held four times in the year at Cape Town and twice at Graham's Town, and the Courts of Oyer and Terminer and

general gaol delivery twice in the year at the same places as the Courts of Circuit are now held, with the addition of the town of Stellenbosch and the substitution of Tulbagh for that of Worcester in consequence of the greater population of the former and its vicinity as well as of the greater facility of access to it from other places.

Trial by Jury.

Without repeating the reasons which we have already offered for the introduction of the Trial by Jury into the Criminal Process, we have now the honor to recommend that it should be adopted in a modified form in the trials of all offences and misdemeanors committed within the boundaries of the Colony by free persons in places where it shall be found practicable to assemble a Jury amounting to eight persons. To this general principle of criminal procedure, we however propose to make exception in the trial of offences committed by the class of persons called "Bushmen," the Prize Negroes during their terms of indentures, individuals of the Frontier tribes when under contracts of service, and slaves. The peculiar relation in which all these classes stand towards the great body of inhabitants from which the juries for the present must necessarily be taken, and the light in which their condition is regarded must constitute, we think, powerful reasons for exempting them as much as possible from the influence of feelings altogether fatal to the right operation of the Jury Trial.

The same impression of the relations of the Hottentots and we may add of the mixed race of that people and the European or native whites would have led us to make the same exception of them from the general form of trial by jury, if we had not felt that the expediency of annihilating those distinctions which the policy of the Colonial Government combining with the interests of the great body of the Higher Classes of Colonists has uniformly created, would be much counteracted by any special exclusion of them as a class from a participation in those rights and benefits which we proposed in favor of all the other free subjects of His Majesty in the Colony. We would also add that altho' there exist certain physical distinctions by which the two races of Hottentots and Bastards may

be generally recognized, yet they have not appeared to us to be sufficiently certain to constitute grounds for legislative distinction in any permanent settlement of their civil rights and condition. We propose therefore that all classes of inhabitants of the Colony of free condition, with the exceptions we have made, should be entitled to be tried by juries of eight persons where and whenever it is practicable to form them, but that no person professing the Christian religion should be liable to be tried by any juror who does not profess it. With a view to afford protection to the Hottentot and Bastard races against the prejudiced and sometimes the hostile feelings of those who may from circumstances form the juries or constitute a large majority of them, we propose for the present and until the effect of the measures we have recommended shall have subdued these feelings, that an option should be reserved to those classes (and which should be claimed and exercised in their behalf by their Official Guardian) of being tried by the Court in the manner we shall propose, and which we should recommend to be equally applicable to the crimes and offences of other free persons in places where juries cannot be formed. The trial by jury therefore in its modified number of eight persons will constitute the principle of Criminal Trial in the Colony, and the Trial by the Court will be the exception, founded either upon the necessity of the case as far as regards the free classes of the population, and upon the possible abuse or perversion of the general principle in its application to two of those classes.

We submit, but with feelings of deference to the practice of England, that unanimity should not be required in the verdicts of the juries, but that the votes of six jurymen out of eight should be deemed sufficient in all cases to enable the Court to pronounce sentence. We think it probable that at the present moment it will be found difficult to form juries of eight persons and as often as will be required in other places than at Cape Town and in the Cape County, Stellenbosch, and Albany. In that event we propose that all offences committed by people of free condition, and by the particular classes we have mentioned should be tried by the Judge of Circuit and the Judge of the County in which the offence was committed or of that County in which the Trial takes place.

We propose that the decision of all points of law should be subject to the opinion of the Judge of Circuit, but referable if he should think fit or necessary to the High Court at Cape Town, and that if the Judges of Circuit should differ in opinion as to the guilt of any person tried before them, a report should be made from the notes of the Judge of Circuit taken by him at the Trial, and which being signed and certified by both Judges shall form the document upon which, saving all just exceptions, the High Court at Cape Town shall deliberate and decide according to the majority of opinions including those which have already been given. We think also that an appeal to that Court against the punishment declared in the sentence should be allowed to the party condemned.

Altho' we have felt ourselves under the necessity of proposing this very modified and imperfect system of Jury Trial in criminal cases, yet we think that this necessity will not be permanent, and the successful resort to which it may be expected in the places we have named will be more effectual in reconciling the inhabitants of the other Counties to an Institution so new to them, than any general or compulsory adoption of it in places where its advantages must be less obvious and its formation attended with much personal inconvenience and trouble.

For the purpose of providing a sufficient number of competent persons to serve on juries at the Criminal Courts, the sheriffs of each Province should be required to make annual returns to the respective Courts of the names of all the respectable inhabitants of free condition and without distinction of colour being above the age of 21 years and householders of the several divisions of the Counties or occupiers of houses on leases for terms of not less than three years, who should be liable to be summoned in their turn to serve on juries. These Returns should be compiled from lists of the inhabitants of each ward in Cape Town and of each division and town in the several counties of each province, which are or ought now to be kept by the wardmasters and veld-cornets. A copy of the sheriff's list and signed by him should be transmitted annually to the Registrar of the Court of each Province, and should be at all times ready for reference or examination by the Judges on the days appointed for holding the criminal Sessions and Circuit Courts at each place, and the Registrar should be bound to

mark in separate columns the appearance and service of each person and to make out and deliver a certified copy of the same to the Sheriff after the Sessions have terminated. The jurors should be summoned in rotation to give their attendance, and in case of challenge being made by the prisoner on the ground of interest or affection the name of the next person in the return should be called, and in failure of appearance the Court should be empowered to appoint any respectable person happening to be present or any inhabitant of or person resident in the Town in which the Court is held or of the vicinity, being a subject of His Majesty. The Courts should also have authority to fine the persons who fail in giving their attendance after being summoned in a penalty not exceeding five pounds, but it should be a good ground of excuse that a person has been summoned out of his turn and more frequently than he ought to be with reference to the sheriff's list.

With reference to the suggestion contained in our former report, we further recommend that the judicial and magisterial duties in the different counties of each province of the Colony, including in the Western Province Cape Town and the County of the Cape, and which are now performed by the Sitting Commissioner and by the Landdrost and Heemraden or by the Landdrost alone, should be entrusted to the persons who may be appointed by His Majesty to fill the situations which we have designated by the title of Judges of the County Courts, and such other magistrates as may be found competent and willing to discharge the duties of Justice of the Peace in the different divisions we have named. We propose that all these Magistrates should hold Commissions of the Peace for the several counties for which they are to act, and which will enable them to take information of all criminal matters that occur there.

At six different periods of the year, to be fixed by the Governor and Lieutenant Governor and interfering as little as possible with those of the Circuits, we propose that Sessions should be held at the County Towns, at which the Judge of the County Court should preside and be assisted by as many of the magistrates as may find it convenient to attend, but that their presence should not be necessary to constitute a Court, the Judge in all cases deciding upon points of law as they may

arise, and the Majority of the Magistrates voting and deciding upon the punishment.

We propose that the mode of trial of free persons in the County Courts should be regulated by the same principle which we have proposed for those in the Higher Courts and Courts of Circuit.

We recommend that the County Courts should be authorized to try all those offences which are cognizable by the Courts of Quarter Sessions in England, and that they should also have jurisdiction over those which are described in the late Ordinance of the Lieutenant Governor in Council of the 4th September 1826, consisting of simple felonies in which the value of the property stolen does not exceed twenty shillings sterling, but we do not concur in recommending that this jurisdiction should extend to the theft of cattle of any value, although it would seem that such was intended to be given by the 2nd clause of the Ordinance in cases wherein the value of the cattle should be less than five shillings.

It will also be expedient to give to the Courts of County Sessions the power of trying offences against the laws of Internal Revenue in cases where the penalty does not exceed the sum of one hundred pounds sterling, but subject to an appeal to the High Criminal Courts of the two provinces when the penalty or the sum awarded by the sentence exceeds twenty-five pounds.

WESTERN PROVINCE: Simon's Town, Caledon, Worcester, Nieuwveld. EASTERN PROVINCE: Port Frances, Port Elizabeth, Winterveld.

Although we have recommended the appointment of special magistrates at different places in the two provinces, and which we have specified in a former report, yet we do not think that it will be advisable to give to all of them the same extent of jurisdiction which we have recommended in favor of the Judges of the County Courts and who are to preside in them.

The criminal jurisdiction of the Judge at Cape Town will extend to the County of the Cape, but we think that the Resident Magistrate of Simon's Town, which is in the Cape County, should possess equal jurisdiction and comprehend a larger extent of country than that which is at present attributed to it. For the purpose of assisting in the business of police at

Cape Town one or two Magistrates might be named to act both for the town and county. The wants of a population which is chiefly maritime, and the necessity of providing prompt interference and punishment of the violent outrages which so frequently take place on board the ships anchored both in Table Bay and Simon's Bay, have induced us to recommend that the respective Courts at these places should be empowered to take cognizance of violent assaults committed by sailors and others on board British ships while anchored in them.

We also recommend that the Judges of these Courts should be authorized to take cognizance of claims of seamen for wages where they do not exceed the sum of twenty pounds sterling.

The Resident Magistrates who were appointed in the year 1825 by the authority of Governor Lord Charles Somerset to act at Port Elizabeth and Port Frances on the Eastern Coast of the Colony were empowered to take cognizance of minor criminal offences, and to inflict six months imprisonment and fines amounting to 100 rixdollars or £7 10s. sterling, an appeal to the Court of Landdrost and Heemraden of the District being given whenever the term of imprisonment should exceed two months or the fine the sum of 50 rixdollars or £3 15s. sterling.

We think it will be expedient to give a greater extent of jurisdiction to these magistrates as well as to those who may be appointed to reside at Nieuwveld and Winterveld, and to empower them to take cognizance of assaults and petty larcenies committed by free people as well as slaves, with a power of imposing a fine of five pounds and of punishing with imprisonment and hard labour for six months. The Judges of the County Courts sitting either alone or assisted by any other magistrate in the Commission of the Peace should be authorized to take cognizance of petty larcenies and misdemeanors committed by slaves and prize negroes, and to sentence them to punishment not exceeding one year's imprisonment and hard labour, or whipping in the gaol to the extent authorized by the last Ordinance.

This Jurisdiction should also include the complaints of masters against their slaves, Hottentots, or hired servants of free condition.

With regard to offences or misdemeanors committed by free persons of any class, we do not recommend that the Judges of

the County Courts should try or give sentence in them except in the Courts of fixed Sessions. We have had the honor to advert to the jurisdiction which has been exercised over these offences by the Sitting Commissioner at Cape Town, and altho' we do not undervalue the benefit which the establishment of that Court has produced by a prompt application of the Law to the punishment of those offences which are of common occurrence in populous towns, and which are not infrequent in Cape Town, yet we think that the advantage of deliberation in cases which may affect the personal freedom of individuals is to be preferred to that summary jurisdiction which is at present exercised by the Sitting Commissioner under the 91st and 92nd articles of the Crown Trial.

The criminal jurisdiction of the several Courts being thus distributed, we do not propose that appeal should be allowed from the verdicts pronounced either by juries of eight persons or by the Courts of Circuit, but that in cases where the Judges differ in their opinion upon a point of law, or see fit to submit any question of difficulty or importance, they shall have the power to reserve them for the consideration of the other Judges at Cape Town, and we also think that appeals should be allowed against punishments declared by sentences of the Courts of Circuit where they exceed imprisonment for a longer term than two years, fines above one hundred pounds sterling, or transportation for a longer term than seven years, or banishment for three.

Appeals however should be allowed against sentences of the County Courts to the High Criminal Courts of each Province, in cases where the punishment ordered in the sentence exceeds 12 months' imprisonment or a fine or penalty exceeding the sum of £15 sterling or two hundred rixdollars, security for which in the last case and the payment of the costs should be given before the appeal is admitted.

Altho' we recommend an appellate jurisdiction to be given to this amount, yet we should at the same time explain that it is in nowise intended to interfere with the power of controlling and quashing the criminal proceedings of the inferior Courts by the High Criminal Court which is implied in that which we have already had the honor to suggest of issuing writs of mandamus and certiorari.

We have had occasion to remark the inconvenience and delay which has not unfrequently arisen from the variety and uncertainty of the jurisdictions to which crimes were subject by the existing law, and the necessity of the attendance of one or more commissioned members of the Court and other officers as well as of the Public Prosecutor in the duties of local inspection. We certainly think that this inconvenience has in some measure been remedied by the appointment of the Sitting Commissioner at Cape Town, whose attendance is more promptly afforded upon such occasions. We should submit however that in future and with exception of the inspection of dead bodies, the verification of acts of local violence should be obtained as in England through the medium of the evidence of eye witnesses which any magistrate should be competent to take under the ordinary sanction of an oath where the nature of that obligation is understood, or of serious admonition to speak the truth, when it is not so.

We think that it will be found necessary to confirm the appointment of superintendant of police at Cape Town, for altho' your Lordship will observe by reference to the Ordinance No. 12, which describes his duties, that they do not exceed those which fall to the lot of every intelligent and unpaid magistrate in a populous town of England, yet they comprise many of a municipal nature which have been hitherto performed (however imperfectly) by the President and Members of the Burgher Senate, and which impose a degree of personal responsibility which is inconsistent with the gratuitous discharge of such functions.

Considering the importance of securing the earliest inspection of dead bodies of persons who have come to violent or sudden deaths by persons competent and ready to perform that duty in the most populous and extensive counties of each province, we recommend that a coroner should be appointed for Cape Town and County, and for those of Stellenbosch and Swellendam and for Graaff Reinet and Uitenhage, and that the Judges of the County Courts should act as coroners in the others. In the former counties, the inquests should be performed by the Coroner himself except in that of Graaff Reinet, where as in those counties also in which the County Magistrates act as Coroners the Veld Cornets or constables of each division might

be allowed to act in that capacity whenever the distance of the place to be visited from the County Town may exceed 35 miles. The coroner should have the power to summon five persons to act as jurors in Cape Town and District and three persons in the other Districts, to administer the usual oaths to them, to take down the evidence in writing including that of a surgeon if his attendance can be procured, but not to consider it as indispensably necessary to the verdict. For reasons to which we have before adverted, we think that medical certificates or opinions should in no cases be received without the oath or examination of the person who gives them. The duty of the Coroner should extend to inquiries respecting the causes of the death of all classes of persons without distinction who die in prison or by violence or suddenly. We have observed that the present prohibition against the burial of slaves or Hottentots from whatever cause they may have died without the permission of the Fiscal, the Landdrost of the District, or the Veld Cornet, has not been duly attended to, but we think that it is highly necessary to the protection of these two classes of the population, and that the amendments which are contained in the 16th clause of the Ordinance No. 19 will be very beneficial. We also think that a similar prohibition, and extending to all dead bodies, should be enforced against the Superintendants of Public Hospitals and against all gaolers.

An important point of duty and discretion will further devolve upon the magistrates in taking information and in committing to prison or taking bail from persons charged with or suspected of having committed offences and misdemeanors, and the exercise of which (as your Lordship has seen) has hitherto been limited to Courts whose competence of jurisdiction has appeared to us to rest upon a basis very imperfectly defined, and upon rules of distinction which it has been found inconvenient to observe.

The practice of taking sureties of the peace is one that has long been sanctioned by the Dutch law, and will very properly form a portion of the duties of the new magistrates and arising out of their commissions. As a general rule for their guidance, it should be understood that no warrant for the apprehension of any person charged with or suspected of crime, nor for the

search of goods suspected to have been stolen when deposited in the house of any individual whether free person or slave, should be issued by them except upon previous information taken in writing and sworn to by the person who gives it. Exceptions must necessarily here be made to the information of persons who have no knowledge of religious obligation, but it will be well to require that all circumstances which have a tendency to confirm the matters declared by them should be supported by evidence before the person charged be held to bail, or be committed to prison, or search be made in his dwelling. The great distance by which in all probability the magistrates will be separated from each other even in each County will in a great measure impede the beneficial application of that part of the new Act of Parliament for improving the administration of criminal justice, which entrusts to two magistrates the discretion of admitting to bail persons who have been charged before one magistrate upon evidence which altho' insufficient to raise a strong presumption of guilt, yet does not justify the dismissal of the charge ; but we think that it may be modified by giving the same discretion to the Judge of the County Court that has been given to two justices by the new Act in cases where commitments under the circumstances described in the Act have been made by one magistrate of the County, and also to himself and another magistrate in cases where the commitments may have been made in the first instance by himself alone. The 2nd and 3rd clauses of the same Act will sufficiently explain the duty which devolves upon the magistrates in taking informations in cases of felony and misdemeanor. We apprehend however that these provisions as far as they regard the taking of bail cannot be made applicable to slaves or persons of other classes who do not possess property to pledge as a security for their future appearance. As a general rule however we trust that it will be positively prescribed that in future no person of any class except when taken in flagranti delicto shall be detained or committed to gaol without a warrant signed by one of the judges or a magistrate of a county court, or backed by a magistrate of the county in which the offender or suspected person is found.

The power of binding persons over to keep the peace is one which is so necessary and beneficial that we cannot hesitate to

recommend its continuance if it be not implied by the terms of the Commissions of the Peace with which we have already recommended that the judges of the counties and the magistrates should be furnished. We are not however equally prepared to recommend the continuance of the power to which we have before adverted in the fiscal and the landdrost or the officers by whom they will in future be represented, of summoning persons whom they suspect of an intention to commit crime and of warning them against it. We would by no means discourage the use of friendly admonition and advice in cases of personal quarrel, but we cannot concur in considering such an attempt on the part of the magistrate as an indispensable preliminary to the further investigation of injuries and complaints that may be addressed to him by individuals.

In the 2nd clause of the Ordinance No. 12 it is ordered that the Superintendent of Police shall hear complaints and take informations in a summary way respecting all crimes and transgressions of the laws and report the same to the fiscal, in order that the offenders may be dealt with according to law, with the exception of such offences as are cognizable by one commissioned member of the court of justice and more recently by the Permanent Sitting Commissioner.

We think that the Superintendent of Police at Cape Town should be included in the commission of the peace, by which he will then be able to take informations in the same way as any other magistrate, and to act upon them, but that the duty of bringing the parties charged upon such information with crimes which he himself has not authority to try or to punish should devolve upon the Clerk of the Crown acting as the same officer in the other counties under the direction of the Attorney General, and we propose that informations should be taken by the judges of the county courts and by the other magistrates named in the commission of the peace, and that from that period the further steps of the judicial process should be conducted by the clerks of the crown unless otherwise directed by the Attorney General.

It has been customary to bring misdemeanors and minor offences for which punishment called " correctional " is deemed sufficient before the sitting commissioner, and to treat them in a more summary manner than such subjects merit. We

think that in cases of offences as well as of misdemeanors, information upon oath should be taken by the superintendent of police, the judges of the county court, or the other magistrates, and that in default of security when required for the appearance of the person charged at the next session, he should be committed to gaol, the Public Prosecutor declaring his intention, and the private parties being bound over to prosecute, and the witnesses to give their attendance ; but we think that the lighter offences and misdemeanors committed by slaves and prize negroes under contract should be tried before the Judges of the County Courts out of Sessions and that they should have power to inflict punishment on them not exceeding six months imprisonment and hard labour. The informations should in every case be submitted to the clerks of the Crown, who in all cases of doubt as to the mode of proceeding should apply to and receive instructions from the Attorney General, and this officer should be considered responsible for all delays in prosecution and proceeding to trial at the earliest session, except where parties are allowed to exercise the right of prosecution.

Public Prosecutors.

As we are of opinion that the duty which by the English Law devolves upon the Grand Jury of determining by a summary examination of the witnesses for the Prosecutor, whether a person who has been charged or committed under suspicion of an offence is to be put upon his trial cannot at present be performed without occasioning to the jurors and to the witnesses a degree of inconvenience which would impede the successful operation of such an Institution, while at the same time many circumstances in the character of the population at large render it inexpedient to commit to each individual the sole power and responsibility of prosecuting offences, we have considered that the appointment of Public Prosecutors will be indispensably necessary to secure the active and vigilant performance of this duty.

The Attorney General of each Province should be primarily charged with the duty, and the Judges of the County Courts as well as the Magistrates should be required both to give him

the earliest information of the commission of serious offences within their respective counties, and to make a report of the measures they have adopted for the pursuit or apprehension of the offenders.

In this respect we think it will be advisable to give to the Attorney General of each Province the right of requiring from the Judges of the County Courts and the Magistrates monthly returns of all commitments made by them to the respective gaols, specifying the date, description of the offender, the offence charged, and the measures adopted, and that they should in everything that respects the collection of evidence and the declarations of witnesses conform to such instructions as they may receive from the Attorney General, or such applications as may be made to them by the clerks of the Crown of each County, but at the same time to consider it their duty to use the utmost diligence in establishing those facts by which the prosecution of crimes may be supported. In the performance of this duty the Attorney General will be supported and assisted by officers who should likewise be considered as subordinate to him in his capacity of Public Prosecutor. The persons appointed to the situations of clerks of the Crown in each County may for all purposes of public Prosecution be considered as representing the Attorney General and as acting under his orders.

The information taken by the Magistrates should be filed in the offices of the Judges of the County Courts, and no copy or communication of them should be made before trial except to the Attorney General or the clerks of the Crown, under a heavy penalty, or even afterwards except by an order of Court.

The prosecution of crimes and misdemeanors throughout the Colony should be effected by informations filed by the Attorney General in cases of importance, and by the clerks of the Crown in his name in ordinary cases, but we think that in all others, but more especially in those of private libel, assault, or other misdemeanors, a right should be reserved to the parties conceiving themselves injured to carry on the prosecution themselves if they should prefer doing so, or if the Attorney General should decline it, and in such case we think that the parties declaring their intention should be required to enter into

recognizances to prosecute at the next ensuing Court of Session or Circuit.

We have taken occasion to bring to your Lordship's notice the inutility of that regulation by which all trials were to be brought on within nine days at furthest after the granting of the decree for apprehension or for a summons for personal appearance. The periodical return of the Sessions and of the Circuit and County Courts, and the obligation to which the Attorney General and the Clerks of the Crown should be liable, and to which they should also be compelled, of bringing before these Courts the cases of all prisoners confined or out on bail, a list of whom signed by the High Sheriff should always be submitted to the President of the Court on its opening, will afford an opportunity to the Courts as well as to the Public of watching the conduct of the Prosecutors in this respect, and the right of applying to the Court for writs of Habeas Corpus, which should be extended to the Guardians of Slaves and Hottentots, will we hope insure a proper degree of vigilance and dispatch in bringing to trial those who are detained in custody. The Attorney General and clerks of the Crown will also file all informations of breaches of revenue and police committed within their respective districts, and in these respects they will receive directions from the Civil Commissioners charged with the duty of collecting the Revenue. We have had the honor to propose that all penalties imposed for breaches of Revenue and Police, and not otherwise provided by any Act of Parliament, should be distributed in shares of one half to the informer and one half to the Colonial Treasury, and the clerks of the Judges of the County Courts should be required to transmit to the Civil Commissioners of their County or District quarterly returns of all penalties and fines whatsoever ordered to be levied by the Court of Circuit or the Judge of the County Sessions, attested by the clerk of the former and by the Judge of the latter Court, and we think that the recovery of such penalties may be effected by the means pointed out in the 5th Geo. 4th Chapter 18.

The Attorney General and Clerks of the Crown should be allowed to be present if they think fit at the examination of persons brought before Magistrates, and the Clerk of the Crown for Cape Town and the Cape County should give his attendance

at the daily sittings of the Judge of that place, and forward all Prosecutions which may arise out of them, subject to the opinion of the Attorney General.

The Clerks of the Judges of the County Courts should keep the records of all proceedings that are brought before them, and we think that considering the multifarious nature of the applications that will be presented to the notice of the County Judges in matters of Police, they should all be enjoined to keep journals, and especially a record of such inquests as they may make themselves or receive from the constables of the Districts, both of which should be submitted to and inspected by the Judges of Circuit. There are many points of minor regulation connected with the performance of the Magisterial and Judicial Duties in the Provinces which we forbear to enumerate in this place, as we conceive that they will readily occur to persons who are in the least conversant with the practice of the English Law, but we think it right to state that many of the regulations contained in the instructions for the Country Districts will be found to be worthy of adoption in as far as they are not repugnant to the leading principles of that Law. We think that much advantage may be gained and delay and uncertainty avoided by the circulation of printed forms, especially of convictions made before Magistrates and of warrants to be issued by them, and that the general form prescribed for convictions before Magistrates by the 3rd Geo. 4, Chap. 23, should be adopted for general use, after being approved by the Chief Justice and Judges of the high Courts.

From the tenor of the recommendations with which our report upon the expediency of introducing the English Laws and Practice was accompanied, it may not be necessary for us to repeat the cautions against an early or too rigorous adherence to those technical forms and distinctions which have been considered essential to the due protection of individuals from the abuse of magisterial authority in England, and we are aware that considerable allowance must be made for those magistrates who may be willing to undertake the duty in the different divisions of the counties or in Cape Town, and we can only anticipate in the Judges who may be selected to fill the higher judicial situations in the Colony the same liberal and candid interpretation of the conduct of such magistrates

as is wont to be manifested towards them by the High Judicial Authorities in England.

The tenor of the criminal informations filed by the Attorney General and the Clerks of the Crown will probably be conformable to that of English Indictments, but we trust that the improvements introduced by the several clauses of the 7 Geo. 4, from the 14th to the 21st inclusive, will be held to be applicable to them, and we should venture to suggest that the want of proof of any averment, which is not necessary in the description of a crime charged, should not be considered fatal to those parts of an indictment which are necessary and which have been established by proof.

The practice which we have noticed of requiring a copy of the indictment to be furnished to the prisoner three days prior to the Trial is so consistent with the ends of Justice that we feel no hesitation in recommending its continuance, the term being extended to six when the trial takes place in the same county in which the indictment has been served upon the prisoner and 12 days when it takes place out of the County. The prisoner should be required at the time of the indictment being served upon him, or read to him, when he is unable to do so himself, (and on which occasion, if he be a slave or Hottentot the Guardian should be required to be present) to name the witnesses whom he wishes to have summoned for his defence, and whose attendance should be compelled by authority of the Court, their expenses being defrayed by the prisoner, or in case of his poverty by the chest of the county upon a certificate of the prisoner's advocate or the guardian of Hottentots and slaves that their evidence is material to his defence.

We think also that except on any particular occasions the access of friends and professional advisers should not be denied to prisoners under charge and confined in prison.

It is perhaps unnecessary for us to recommend that the practice of putting interrogatories to the prisoner either before or at the Trial should be entirely confined to an inquiry respecting his name, country, and place of abode, and that after the indictment has been read to him in open Court he should only be required to declare whether he is

guilty or not guilty. But previous to judgment being given on a plea of guilty and confession or on standing mute, we should strongly recommend that all the informations taken should be read over in Court and in the presence of the prisoner.

In the event of the appointment which we had the honor to recommend of a professional person for the defence of Hottentots and slaves, who as we have before observed comprise so large a portion of the delinquents, it will be unnecessary to make further provision for the professional defence of any individuals whose poverty prevents them from incurring that expence, as we think that it may not improperly be entrusted to the same officer or in his absence to any advocate whom the prisoner may name, and who should be bound to act for him, or to any agent if an advocate be not present.

From the articles of the Crown Trial to which we have referred, your Lordship will find that the advocate for the prisoner has always been allowed to address the Court in his defence, and as it will be the duty of the Judge to take a full and impartial review of the evidence and of the law in cases where juries are employed, we are disposed to recommend that the practice should be continued, and we think that a recapitulation and statement of the facts both by the Prosecutor and the Advocate of the Prisoner will be advantageous to the Judges when they act without the intervention of a Jury.

With reference to the observations which we have had the honor to make upon the state of the Law as it regards the evidence of slaves, and upon the effect of the 39th clause of the Ordinance No. 19, we think that a more intelligible and defined rule is required.

The exclusion of the evidence of slaves and other classes who are not instructed in the nature of religious obligation is contrary to the usage which the clause recites, but which it affects to confirm, and we see reason to apprehend that the entire exclusion of such testimony until these classes of the population shall generally be informed and impressed with a religious sense, will cause a fatal obstruction to the development and establishment of several important cases. We should prefer therefore a recognition of the general admissibility of

such witnesses in all cases, leaving their credit to be estimated by the Court or Jury according to the principle which is applicable to all other secondary evidence, with the exception of the case of slaves testifying in criminal charges against their masters and mistresses. We should at the same time recommend that no verdict or sentence should be effectual in law for the infliction of any capital punishment which had proceeded upon the evidence of persons not understanding the nature of an oath, unless their testimony is confirmed by other or circumstantial evidence.

In all other respects we are sanguine in our belief that the application of the rules of evidence which have been sanctioned by the decisions and practice of the Courts of Justice in England under proper caution and explanation cannot fail to produce the most beneficial consequences in the investigation of criminal charges, even under the disadvantages to which it is liable from the strong prejudices of the white population and from the imperfect sense of religious and civil obligation by which the uninstructed portion of the Colonial Population is distinguished.

Having adverted to the practice of condemning the parties who are sentenced to receive punishment for crimes and misdemeanors to the payment of costs which their criminal conduct has occasioned, we would recommend that it should be discontinued, but that a discretionary power should be allowed to the Courts to order payment of costs in those cases in which private individuals having exercised the right of prosecution shall not succeed in obtaining convictions, and likewise in those which have been conducted either by the Public Prosecutor or individuals for assaults or grievous bodily injuries.

With regard to slaves, we think that the cost of their maintenance in gaol until the day of trial should be defrayed by their masters, but from that date it should cease and be borne by the public. On the other hand we recommend that the costs of proceedings incurred in prosecutions for breaches of the Revenue Laws should be paid by the parties convicted, but that in these as well as in prosecutions for misdemeanors the only costs that should be allowed to the Public Prosecutor should consist of those which we have enumerated in the

Schedule annexed, and that in all Criminal proceedings whatever except those for breaches of the Revenue Laws the use of stamps should be dispensed with. We have &c.

(Signed) JOHN THOMAS BIGGE,
WILLIAM M. G. COLEBROOKE,
W. BLAIR.

[Annexure 1 to the above.]

Proposed Schedule of Fees to be charged, when allowed in criminal Proceedings, according to the recommendations of the Report upon the Criminal Law of the Cape of Good Hope.

TO THE CLERK OF THE CROWN.

	<i>s.</i>	<i>d.</i>
For framing the Indictment	1	6

TO THE CLERK OF THE JUDGE.

For filing an Indictment	1	0
For filing or recording the Plea	1	0
For making out a summons to each witness		6
For taking the declaration of each witness in Court	1	0
For recording the verdict or sentence	1	0

TO THE MESSENGER.

For summoning each witness		9
If after sunset	1	6

Horse hire allowed for any greater distance than 5 miles from the County Town. These and all other expences to be certified by the judges of the respective courts.

In Revenue Cases.

TO THE CLERK OF THE CROWN.

	<i>s.</i>	<i>d.</i>
For framing the information	2	6

TO THE CLERK OF THE JUDGE.

	<i>s.</i>	<i>d.</i>
For filing an information	1	0
For filing and recording plea	1	0
For making out summons to each witness		6
For recording the verdict or sentence	1	0
For a search warrant	1	0

[Annexure 2 to the above.]

The Crown Trial. See Vol. XXV, page 90.

[Annexure 3 to the above.]

Records held before His Honor Sir J. A. Truter, Knight, Chief Justice, and the Members of the Worshipful the Court of Justice of the Cape of Good Hope and the dependencies thereof in the case of Jan Jacobus de Villiers, appellant from a sentence of the Board of Landdrost and Heemraden of Stellenbosch, dated the 18th December last, in a criminal Prosecution carried on by the Secretary of that district R. O. contra Jan Jacobus de Villiers aforesaid, defendant in person, on a charge of ill treatment of Cornelius of the Cape, slave of the defendant in person's father Paul de Villiers, Jan's son, on Thursday the 16th January 1823.

All the Members present.

Advocate M. A. Smuts for the Defendant in person Appellant, *contra* Petrus Canzius van Blommestein, secretary of said District, R. O. Respondent, for the annulling or correction of the abovementioned sentence.

Advocate M. A. Smuts being duly qualified with a special proxy from the Appellant exhibits the different Records of the Investigation held in this case, as also those of the Trial, said Records being the following :—

1st. Extract from the Journal kept by the Landdrost of Stellenbosch.

Sunday, the 8th September 1822.

Solomon, slave of Paul de Villiers, complains that his young master Jan de Villiers punished his fellow slave named Cornelius on Wednesday last towards the evening, and that he the next

morning beat him with a stick and hit him on the head through which said Cornelius received a deep wound, that he died last Friday morning, and was buried the same evening.

Resolved to take Solomon's deposition before Commissioned Heemraden, and thereupon to hold an inquest on the body, which was done accordingly this day, and a report of the case was transmitted to His Excellency the Governor, to the Chief Justice, and to His Majesty's Fiscal.

2nd. Deposition given before the undersigned Commissioned Heemraden by Solomon of the Cape, supposed to be about thirty years of age, slave of Paul de Villiers residing at Drakenstein, at the requisition of Daniel J. van Ryneveld, Esqre., Landdrost ; said deposition being as follows :

That deponent was on last Wednesday at the land with his comrades digging the vineyard, that on going home in the evening his fellow slave Cornelius of the Cape walked very slowly, saying he was very giddy, but which deponent attributed to a ring with a chain that he had on one of his legs, and which chain he had fastened to a thong round his body, that his young master, named Jan, being angry at Cornelius walking so slowly, gave him some strokes in consequence, as deponent heard, and afterwards gave orders for his being flogged ; that Cornelius was thereupon brought into an outdoor apartment, where deponent also was, and that being held fast by Arend, Adriaan, Oranje, and Solon, he was flogged on his bare posteriors with a Trace, and that he received many strokes, but that he could not state the exact number, that after he had been flogged he was put in irons by his said young master, but was shortly afterwards released and allowed to go to bed.

That on Thursday morning deponent together with said Cornelius and all his other comrades went to the land to dig, on which occasion Cornelius said he felt very curiously and could not work ; in consequence of which his said young master again gave him some strokes with a quince stick of about an inch in thickness, one of which hit him on the head and made a hole at the back of the same, from which much blood flowed. That at noon the same day Styn, one of the maids, came to the land to bring the victuals and that she took Cornelius away with her. That on coming home in the evening from the work he found Cornelius sick in the dwelling house and

the slave August taking care of him, that he died at day-break on Friday morning, and was buried the same evening after dark.

Question by the Landdrost Was your old master present at all these punishments ?

Reply. No, he does not trouble himself about the slaves, but he came to the land after my young master had struck a hole in Cornelius's head, on which old master having asked how Cornelius came to bleed so, young master answered I have flogged him and on that occasion hit his head.

Thus deposed at the Drostdy of Stellenbosch on the 8th September 1822, in presence of Christoffel Jacobus Briers and Frederik Ryk Rudolph Neethling as Commissioned Heemraden, who together with the deponent and me the Secretary have duly signed the minutes hereof.

Quod Attestor.

(Signed) P. C. VAN BLOMMESTEIN, Secretary.

3. On this day the 8th September 1822 We the undersigned Commissioned Heemraden Arend Brink, Senior, and Christoffel Jacobus Briers (the latter in the place of Frederik Ryk Ludolph Neethling who on account of relationship excused himself from this Commission), duly assisted by the Secretary and the District Surgeon R. Shand, at the requisition of the Landdrost Daniel Johannes van Ryneveld, repaired to the place named Rozendaal, situated at Great Drakenstein, in consequence of an information given this day by a certain slave named Solomon, belonging to Paul de Villiers Jan's son, that his young master named Jan Jacobus had so beaten his fellow slave Cornelius of the Cape in the evening of last Wednesday and Thursday morning following, and had put him in the stocks on Wednesday evening, and on the occasion of the flogging had struck a hole in his head, that he died on Friday morning last and was buried the same evening after dark.

Having in presence of the Landdrost aforesaid caused a corpse to be taken up out of the grave, we perceived it to be that of a black man, whom Paul de Villiers, who was present at the inquest, stated to have been called Cornelius of the Cape, that he had been his slave, and was about twenty-five

years of age. Having caused the body to be completely dissected, we found the following circumstances :—

(a) On both legs chafed marks, appearing to be of irons having been on his legs.

(b) On the back and hind parts the marks of trifling wounds, but of little signification.

(c) On the back part of the head a wound on the left side of about half an inch long.

(d) The skin being removed from the skull, it appeared that the wound on the head had penetrated to the bone.

(e) The skull being removed, the Commission further found blood between the skull and the brains, and

(f) The upper edges of the brains red.

The abovementioned Doctor Shand declaring “that an inflammation of the brain was the cause of the death of the said slave Cornelius.”

Paul de Villiers thereupon stated that on Thursday last he discovered that Cornelius was sick, on which he caused the greatest care to be taken of him, that he had sent for Doctor Shand early on the Friday morning, but that he died shortly afterwards, before the Doctor came. That the Thursday evening he had caused the irons, in which he had been put with the previous knowledge of the Landdrost, to be taken off.

Of all which an Act has been formed, which is the present Instrument.

Done at the place Rozendaal situated at Great Drakenstein, day and year as above.

As Commissioners,

(Signed) AREND BRINK,
C. J. BRIERS.

In my presence,

(Signed) P. C. VAN BLOMMESTEIN, Secretary.

4.

STELLENBOSCH, 8th September.

This is to certify that I this day proceeded with the Commission to the place of Mr. Paul de Villiers at Great Drakenstein to examine the body of the slave boy Cornelis, and found as follows :—

(See foregoing.)

On Friday the 6th about 11 o'clock a.m. I received an urgent call from Mr. Paul de Villiers to see a slave boy that was very sick, which I immediately attended to, but on my arrival there at 1 o'clock I found him already dead. On enquiring into the particulars of the case I learned that in the course of the evening of the 4th he had been complaining, and before midday of the 5th he was attacked with giddiness, faltering in his speech, and staggering in his walk, as if he had been drunk. He continued to grow worse from partial to complete insensibility, locked jaw, foaming at the mouth, snoring in his sleep, coma, which symptoms continued with more or less violence to the period of his death on the Friday morning. As nothing passed at this visit which could lead me to suspect that he had experienced any ill treatment or corporal punishment, I did not then think it necessary to examine the body, considering it to be an idiopathic case of Inflammation of the Brain.

From the high state of inflammatory excitement and vascular congestion in the brains discovered on dissection, and the history of the symptoms attendant on the case, there cannot be a doubt but that the slave in question owed his death to inflammation of the brain, which had been imperceptibly supervening a day or two before, and aggravated or suddenly brought into more violent action from the infliction of the blow, or the subsequent treatment he had experienced.

(Signed) ROBERT SHAND, M.D., District Surgeon.

Records held before Messrs. Christoffel Jacobus Briers and Willem Wium, Senior (the latter in the stead of Mr. Brink who in consequence of a death which took place in his family last night could not attend), commissioned Heemraden in the case of an information given by Solomon of the Cape, slave of Paul de Villiers of Great Drakenstein, respecting the death of his fellow slave Cornelius of the Cape.

Monday, the 9th September 1822.

The Landdrost having stated that the witnesses whom he had summoned to give evidence in this case were present, the following were called in and examined :

1. Adrian of the Cape, supposed to be about twenty-six

years of age, slave of Paul de Villiers, who having promised to speak the truth, deposes as follows :

That deponent together with his comrades was employed at the place of his master on Wednesday last in digging a ditch and planting a quince hedge, in which work his fellow slave Cornelius assisted. That on going home in the evening said Cornelius could scarcely speak, which, when he got to the house, deponent's young master said was affectation, and gave him some strokes in consequence, which however deponent only heard, as he was in an outer apartment.

That shortly after, deponent's said young master said that Cornelius should be punished, wherefore he was brought into the said apartment and having been entirely undressed and held fast by Arend, Oranje, Solon, the deponent, and, to the best of his recollection, by Solomon also, he received many stripes on his back and posteriors with a trace, without deponent being able to state the exact number, but thinks it must have been about twenty or thirty. That after the flogging said Cornelius was put in irons by his young master with the assistance of Oranje and Arend in the same apartment, both hands having been made fast to his feet, in which position said Cornelius remained from the dusk of the evening till after supper, for that when deponent went to sleep said Cornelius was still in irons.

That the next day all the people went again to the land to work, and Cornelius with them, who said he was so weak that he could not work, for which his young master again beat him with a quince stick about an inch thick, having previously caused him to be held fast by the slaves Maandag and Saul, and on which occasion Cornelius received a blow on his head, which immediately began to bleed profusely, when deponent by order of his said young master applied some tobacco spittle to the wound. That deponent's old master came afterwards to the land, but that deponent does not know what he said, as having stood at some distance from him. That the above-mentioned Cornelius was afterwards ordered by his young master to burn some bushes, but which he did not do, having remained lying near the bushes.

That at noon one of the maids named Styn came to the land with the victuals, and that she took Cornelius away with

her. That on deponent coming home in the evening he heard that Cornelius was worse, in consequence of which deponent on the orders of his old master assisted to put Cornelius in a warm bath, and that he was that night taken care of by the slaves August and Flux, but that he died on Friday morning after a Doctor had been sent for, and was buried the same evening after work.

Questions by the Landdrost.

Did the deceased complain of anything on the Wednesday previously to the flogging ?

Answer. No, he worked briskly with us that day. (Further says) When going home in the evening he said to young master my foot is lame, and therefore I remained in the mill. He could not speak plainly at that time, but young master said it was nothing but affectation.

When was it that your young master flogged Cornelius at the land ?

Answer. It was in the forenoon, it must have been about nine o'clock.

How did Cornelius always behave ?

Answer. Badly, he ran away continually.

2. Oranje of the Cape, brother of Solomon the complainant, supposed to be about thirty years of age, likewise a slave of Paul de Villiers, who having promised to speak the truth deposes as follows :—

That last Wednesday evening deponent with the other people having come home from their work at the land, and sitting in an outer apartment, he heard somebody flogged, and which he afterwards heard was Cornelius, by his young master. That shortly afterwards said Cornelius was brought into the apartment where deponent was, on which occasion his young master said that he must be punished because he would not speak plainly, and that it was nothing but affectation. That said Cornelius was then entirely stripped and laid down by Adrian, Arend, Solon, and deponent, in which position he was flogged with a trace to the number of between thirty and forty

stripes, on which he was put in irons hand and feet, which was about the dusk of the evening, with orders to the slave Solon that if he begged and prayed and gave good words he was to release him. That after remaining for some time in the irons, which was till after supper, said Solon released him, after which his young master came and asked if Cornelius had spoken better, which Solon having affirmed, he thereupon went away.

That they the next morning went to their work at the land, where having remained for some time, deponent heard some strokes given to Cornelius, for he did not see it, because when any of them was flogged if any of the others looked round to see they were likewise flogged. That after Cornelius was beaten, deponent perceived that his head was bleeding, on which his young master asked him how his head came to bleed so, further saying that he had most probably hit him with the stick on the head, and then desired Adrian to apply some tobacco spittle to the wound and to put his hat on Cornelius, who was thereupon ordered to collect some bushes in heaps and then to burn them, which he not having done properly, as he staggered much, he was held fast by the slaves Solon and Maandag, and received some blows with a quince stick on his posteriors. That Cornelius remained lying there by the bushes, because he could not hold out any longer through weakness. That shortly after deponent's old master came to the land and spoke to his son, but that deponent did not hear anything of what he said. That at noon one of the maids named Styn came to the land with the people's dinners and that she took Cornelius away with her, and that deponent saw Cornelius from the land fall down near the burying ground, whence he was fetched away. That on deponent coming home in the evening he heard that Cornelius was worse, in consequence of which they put him into a tub of warm water, in which he the deponent assisted and then went to bed. That very early the next morning while at work he was called to come to Cornelius, which having done he took him in his arms, on which occasion a looking glass being held before his face, they said he still breathed. That deponent then went back to his work, when he heard at noon that Cornelius was dead.

Questions by the Landdrost.

Do you know that your master sent for a Doctor on Friday ?

Answer. When I had Cornelius in my arms a little boy got ready to go, and my master wrote a note for a Doctor.

What o'clock was it when Cornelius was punished at the land ?

Answer. That I cannot say with truth, but it was long before dinner.

Was there anything the matter with Cornelius before he was flogged that Wednesday ?

Answer. No, he always worked briskly with us. I only heard from Solon that having been tired that evening from the work, he had drunk water and it was very cold that evening.

Was he a bad or good slave ?

Answer. He was always a bad boy, he was continually running away. (Says afterwards) He was a Cape boy, and could not work with us, for what does a town slave know about farm work ?

Was Cornelius still alive the morning when you came to him ?

Answer. That I don't know, for his body was limber. They said that he still breathed, but I did not see it, and in the evening he was buried.

3. Solon, of Mozambique, supposed to be about thirty-five years of age, slave of Paul de Villiers, who having promised to speak the truth deposes as follows :—

That deponent together with Cornelius and the other people coming home from the land on Wednesday evening last, said Cornelius went and stood in a ditch to drink some water ; that deponent thinking he was drinking too much desired him to desist, saying it was not good, but that Cornelius said he was so thirsty and exhausted. That when they got as far as the mill on their way home, Cornelius fell down, saying he was quite exhausted, at the same time staggering backwards and forwards, and in which situation deponent brought him to near the stable, where his young master asked him what was the matter with him, on which deponent told him what had happened, but Cornelius not being able to answer his young master properly, he was punished with a stick, without deponent knowing the number of strokes he received, on which occasion

deponent and the slave Manuel held him fast. That this being done, and Cornelius not yet speaking well, his young master called to the stable boy, being a slave named Flux of Mozambique, to bring a trace, which he having done, Cornelius was brought into an outdoor apartment, and being there held fast by Arend, Oranje, Adrian, and deponent, he received many stripes on his bare back and posteriors, but that deponent does not know the number. That after he was flogged he was put in irons by his young master with his hands made fast to his feet and his hands crosswise, on which occasion his young master gave deponent orders to take care that when they went to supper Cornelius should not have any, but that if he begged and prayed and spoke better, to release him out of the irons and to give him something to eat. That his young master having supped, deponent released Cornelius out of irons and gave him some victuals, and that he was then so cold, notwithstanding he sat on the fire hearth, and so curious that he let the bread fall out of his hands. That his young master having thereupon come in, deponent told him he had released Cornelius out of irons, because he had begged him to do so and had spoken better, and that deponent then went to sleep together with Cornelius alongside the hearth. That they having the next morning proceeded to the land in order to clear it, said Cornelius however worked but very little, saying he was too weak, on which his young master again gave him some strokes, and afterwards had him again held fast by deponent and the slave Maandag and flogged him with a stick, without deponent knowing the number of strokes. That Cornelius could do but very little work afterwards, and remained lying down by the bushes. That deponent's old master then appeared at the land, who spoke with his son, but that deponent does not know what he said. That at noon one of the maids named Styn came to the land with their dinners, and that she took Cornelius away with her. That when Cornelius got as far as the burying ground he remained sitting there, and from where he was fetched away.

That on coming home in the evening deponent by order of his master assisted to put Cornelius in a tub of warm water, after which he went to sleep. That next day at noon deponent was informed Cornelius was dead.

Questions by the Landdrost.

What o'clock was it do you suppose when Cornelius was flogged at the land on Thursday ?

Answer. It must have been about ten o'clock.

Did you see that your young master hit Cornelius with the stick on the head ?

Answer. Yes, and the blood ran out of his head. (Says afterwards) It was on turning round his head that young master hit him there.

Do you know whether Cornelius complained of anything, or whether anything was the matter with him, before the Wednesday morning ?

Answer. No, he was always well and worked briskly with us.

Do you know of your master having sent for a Doctor on Friday morning ?

Answer. Yes, I was told so while I was at work.

How thick was the stick with which your young master flogged Cornelius at the land ?

Answer. It was as thick as my great toe.

When was Cornelius buried ?

Answer. Friday evening.

4. Maandag from Mozambique, states to be forty years of age, slave of Paul de Villiers, who having promised to speak the truth deposes as follows :—

That deponent together with Cornelius and his other comrades being at work in the fields clearing of land on Thursday last, and Cornelius working very slowly, his young master asked him the reason, to which he answered that his arms and legs were sore. That his young master thereupon gave him some strokes with a quince stick, but Cornelius still not working as young master liked, the latter ordered deponent and his fellow slave Solon to hold Cornelius, when he received many strokes in a lying position, without deponent being able to state the number. That when the flogging was over Cornelius was ordered to go to work, but which he could not do, saying he was too weak. That deponent's old master having shortly afterwards come to the land, and having spoken a little with him, one of the maids named Styn came there with the people's dinners, and

on going away took Cornelius with her. That Cornelius having proceeded to near the burying ground, there sat down, not being able to walk any farther, on which occasion the young ladies and young master were coming from the house, and that his young master then beat Cornelius again. That on deponent coming home in the evening he heard that Cornelius was worse, and that he died the next day.

Questions by the Landdrost.

1. Do you know anything of the punishment on Wednesday ?

Answer. No, that I know nothing of, but the other slaves do.

2. Do you know of your young master having hit Cornelius on the head at the time he flogged him at the land with a stick ?

Answer. Yes, with one stroke it began to bleed, and when the maid came to the land with the people's dinner young master poured some wine into the wound. (Says afterwards) Cornelius collected the bushes so slowly, that master struck him on the back, and Cornelius standing up, in that manner received the blow on the back part of the head.

3. How thick was the stick ?

Answer. About as thick as my thumb.

4. What o'clock do you suppose it was ?

Answer. Shortly before dinner.

5. Do you know whether anything was the matter with Cornelius before he was punished at the land on Thursday ?

Answer. No, he was always well, and worked briskly, he worked all the days before.

6. Did Cornelius always behave well or ill ?

Answer. He was a good boy, but he continually ran away.

7. When was Cornelius buried ?

Answer. Friday evening after dark.

5th. Manuel, of Mozambique, supposed to be about twenty years of age, slave of Paul de Villiers, who, having promised to speak the truth, deposes as follows :—

That last Wednesday evening deponent coming home from the land with the other people, his fellow slave Solon on that occasion brought Cornelius with him, because he Solon had

orders always to look after him. That having come as far as the stable, and Solon saying to his young master that Cornelius could hardly speak, the former thereupon observed, that it was all affectation, at the same time giving him some strokes with a stick. That Cornelius however still not speaking rightly, he was thereupon laid down and punished with some stripes, being held fast by deponent and said Solon, his said young master giving further orders for his being brought into the room for that he should be punished, and when he was flogged accordingly after having been laid down, but at which last punishment deponent was not present, although he heard Cornelius begging and praying and screaming out. That during the flogging the Field Cornet's English servant knocked at the door of the room, on which they ceased, and then Cornelius was put in irons, his hands made fast to his feet with one hand across the other. That shortly afterwards deponent was also sent for to that room, when his young master asked deponent why he did not inform him that the English servant of De Villiers was there, and for which he the deponent was then punished with ten stripes on his bare posteriors, and on which occasion he was held fast by his fellow slaves Solon, Adrian, Solomon, and Goliath. That after deponent had been flogged, young master gave orders that Cornelius should not have any victuals before that he begged and prayed and spoke better, but that Cornelius was released from his irons after his master had supped, when the people went to bed. That when they were at the land the next day, Cornelius, being slow in his work, upon being asked the reason, said he was much exhausted, upon which young master again beat him with a stick, but still not working to young master's satisfaction, he was again held fast by the slaves Maandag and Solon and flogged; he was then ordered to collect bushes in order to their being burnt, which being scarcely able to do, young master again gave him some strokes with a stick, one whereof hit him on the head, which immediately began to bleed.

That shortly afterwards deponent's old master came to the land, and spoke with young master, without deponent hearing what they said, at which time one of the maids, named Styn, came to the land, with whom Cornelius went home. That having proceeded as far as the burying ground, Cornelius sat

down, whence he was fetched by the people of the house. That on deponent coming home in the evening he was ordered to carry water, as Cornelius was to be put in a warm bath, in which having assisted, deponent thereupon went to bed; while at work the next day he was informed that Cornelius had died that morning.

Questions by the Landdrost.

1. How thick was the stick with which your young master flogged Cornelius ?

Answer. As thick as my great toe.

2. Was Cornelius sick, previously to the flogging on Wednesday ?

Answer. No, nothing ailed him.

3. Was Cornelius a good, or a bad boy ?

Answer. He was good, but he was a cook and could not hold it out to work with the other people. (Says further) He used frequently to run away.

4. Do you know of your master having sent for a doctor on Friday morning ?

Answer. Yes, we had already begun our work, but David told me that the doctor had been sent for when the boy was dead.

5. When was Cornelius buried ?

Answer. Friday evening, after the candles were lit.

Done at the Drostdy of Stellenbosch, day and year as above. Commissioned Heemraad aforesaid, together with me the secretary, having duly subscribed the minutes hereof.

Quod. Attestor.

(Signed) P. C. VAN BLOMMESTEIN, Secretary.

VI. Continuation of the investigation into the information given by Solomon of the Cape, slave of Paul de Villiers, respecting the death of his comrade Cornelius of the Cape.

Thursday the 10th September 1822.

Present the Heemraden Christoffel Jacobus Briers and Willem Wium, Senior.

The Landdrost having stated that there are some other

witnesses in the abovementioned case present, the following persons are called in and examined :—

Arend of the Cape, supposed to be about thirty years of age, slave of Paul de Villiers, who having promised to speak the truth, deposes as follows :—

That deponent together with Cornelius and his other comrades going home on Wednesday last from the work, Cornelius on that occasion complained of not being well, saying that his legs were lame and that he could hardly walk, which the slave Solon, who was always obliged to look after him, having informed his young master of, the latter said it was all affectation, and for which said Cornelius was flogged before the stable, without however the deponent having seen it. That deponent was shortly afterwards sent for to an outer apartment in order to assist to hold Cornelius while he was flogged, because his young master said he would not speak properly, which was nothing but affectation; and that Cornelius, after being entirely stripped, and held fast by Solon, Oranje, Adrian, and deponent, was flogged by his young master with a trace to the number of thirty or forty stripes, and thereupon put in irons with his hands crosswise and made fast to his feet, upon which deponent went away.

That deponent being the next day employed working near the house, he about noon repaired to the land, where he found Cornelius sitting down and not at work with the others, and on which occasion deponent saw he had a hole in his head, of which having asked his comrades the reason, they answered that young master had struck him that hole in his head. That one of the maids, named Styn, came at the same moment to the land, with whom Cornelius and young master went home, without deponent seeing anything further on that occasion.

That on deponent coming home in the evening he was informed that Cornelius was worse, and that he must be put into a bath of warm water, in which deponent assisted. That on Friday morning deponent went to his work at the land, and that while he was there he was informed that Cornelius was dead; and that he was buried the same evening after dark. Deponent further declaring that Cornelius was so bad that evening that he could not speak.

Questions by the Landdrost.

1. How did Cornelius always behave himself at the place ?

Answer. He ran away three times, and I think he did so because he could not hold working with us, for which young master always flogged him.

2. Did your old master know of his having been flogged and put in irons ?

Answer. No, old master was not present, and he did not know anything of the irons.

2nd. Flux, of Mozambique, supposed to be about twenty-five years of age, who having promised to speak the truth, deposes as follows :—

That on last Wednesday deponent and the other people together with Cornelius coming home from the land, when they came as far as the stable Cornelius all at once threw down his spade, which the slave Solon having informed his young master of, and that Cornelius seemed to be very curious and could not speak rightly, his young master thereupon struck Cornelius some blows with a stick, in consequence of which he fell, young master observing that it was all affectation. That however said Cornelius still speaking incoherently, young master thereupon called deponent from the stable, and desired him to bring a trace with him. That deponent having brought a trace belonging to the wheel harness, Cornelius was flogged therewith on the posteriors ; on which occasion he was held fast by Solon and Maandag. That Cornelius was afterwards brought into an outer apartment, when he was punished anew, as deponent subsequently heard, for he was not present. That deponent knows nothing whatever of what further took place that evening, but that the next morning having gone to the land with the other people and Cornelius, where he not working to the satisfaction of his young master, the latter gave him some strokes with a quince stick, and thereupon caused him to be laid down and again flogged. That Cornelius however not yet working to his young master's satisfaction, he again gave him some strokes with the stick, on which occasion deponent looking round, perceived that Cornelius had a hole in his head, from which the blood flowed, and that the slave Adrian applied

some tobacco spittle to the wound. That at noon one of the maids, named Styn, came to the land, with whom Cornelius and his young master went home, but that when Cornelius got as far as the burying ground he sat down, when his young master first beat and then dragged him, and which deponent saw from the land. That on deponent coming home, he heard that Cornelius was worse, in consequence of which deponent assisted in putting him into a warm bath, and that he took care of him the whole night, without Cornelius having spoken a word during all the time. That he died the next morning about eight o'clock, after a doctor had been sent for, and that he was buried the same evening after it was dark.

Questions by the Landdrost.

1. Was anything the matter with Cornelius previously to his being punished on the Wednesday ?

Answer. He was then well.

2. How did Cornelius behave always at the place ?

Answer. He once ran away, which he did because he could not hold out with the work, and when he came home young master always beat him, for young master would have that he should work alike with us.

3. Did your old master know anything of those punishments ?

Answer. No, my old master was not present. (Says afterwards) I cannot complain of old master, he treats us well, but mistress and young master not.

3rd. David of the Cape, supposed to be about twenty-two years of age, slave of Paul de Villiers, who, having promised to speak the truth, deposes as follows :—

That deponent being in the dwelling house last Wednesday evening, does not therefore know anything of what took place with Cornelius that evening. That deponent having gone to the land the following day, where the people were at work, and that Cornelius on that occasion not working to the satisfaction of his young master, the latter gave him some strokes with a quince stick of about an inch thick. That Cornelius having thereupon said, "Master I cannot work, my legs are lame," young master answered it was all affectation. That

shortly afterwards the slaves Solon and Maandag were ordered to lay Cornelius down, because he did not work well, and on which occasion he was again flogged. That Cornelius still not working, but lying down by the bushes, his young master again gave him some strokes with the stick, and that deponent, on looking round, perceived that Cornelius had a hole in his head, which was bleeding, and that Adrian, by order of his young master, applied some tobacco spittle to the wound, after which Cornelius could work but little or nothing. That at noon one of the maids, named Styn, came to the land with the people's dinners, with whom Cornelius returned to the house, but that on reaching the burying ground, he fell down, when young master, who had gone on before, supported him home on his arm. That, on deponent coming home, he heard that Cornelius was very sick, on which Oranje struck off the ring and chain that he had on his leg. That deponent was thereupon employed making fire to boil some water for the purpose of putting Cornelius in a warm bath. That the next morning, while deponent was clearing out the waggon house, he was ordered by his master to bring a ladder into the kitchen, which deponent having done, he on that occasion perceived that Cornelius was dead. That deponent and Flux thereupon brought the corpse into the waggon house, and that it was buried that evening, the deponent further deposing that he heard a doctor had been sent for just before Cornelius died.

Questions by the Landdrost.

1. How did the slave Cornelius always behave himself ?

Answer. He frequently ran away, but he was otherwise a smart boy.

2. Did your old master know of the punishments which Cornelius received and of his having been put in irons ?

Answer. No.

3. How does your old master treat the people ?

Answer. Well, but not so young master.

4th. August of the Cape, supposed to be about twenty-five years of age, slave of Paul de Villiers, who, having promised to speak the truth, deposes as follows :—

That deponent does not know anything of what happened

to the slave Cornelius on Wednesday evening last, but that having gone to the land the next day with his old master when the other people had been already at work, old master on that occasion asked his son how Cornelius came by the wound in his head? to which young master answered I must have hit him there. That deponent's old master having thereupon left the place, and Cornelius not working to the satisfaction of young master, the latter gave him some strokes with a stick of about an inch thick, but Cornelius still not working well, young master called for Solon and Maandag, who having laid him down he was again flogged, without deponent having seen anything further, as he stood at some distance.

That at noon one of the maids, named Styn, came to the land with the people's dinners, with whom Cornelius went away. That deponent came home in the evening, when Cornelius, being very ill, was put into a warm bath; but without his getting better.

That deponent sat up with him that night, without Cornelius having spoken a single word all the time. That about daybreak Cornelius snored once or twice so oddly that deponent lit a candle to look at him, when he perceived that he was something better, on which he was again put into a warm bath, and a doctor sent for. That deponent on going to his work that morning was informed that Cornelius was dead, and that he was buried that evening at dusk.

Deponent further declaring, on being questioned on the subject, that his old master lived well with the people, but that his young master is very severe and unreasonable, and also that deponent does not believe his old master knew anything of the punishments which Cornelius received on the Wednesday, nor his being put in irons.

Question by the Landdrost.

How did Cornelius behave himself at the place?

Answer. He frequently ran away, but he could not keep up with us in the work, and then young master forced him; besides he was too weak, he was a Town boy.

5th. Styn, of the Cape, supposed to be about twenty-five

years of age, slave of Paul de Villiers, who, having promised to speak the truth, deposes as follows :—

That on last Thursday noon deponent having gone to the land where the people were at work, with their dinner, she was desired by her old master to apply some wine to Cornelius's head, which having done, she perceived that he had a wound in his head from which the blood flowed. That when she had done so, her old master desired her to take Cornelius home with her, on which her old master went away. That Cornelius proceeded but very slowly with deponent, saying he could not walk. Young master came after them, and gave Cornelius some strokes with a stick. That having advanced to near the burying ground, Cornelius fell down, on which deponent having said "come Cornelius stand up, I'll give you my hand and lead you," he answered "I cannot walk any farther." That deponent, after sitting a little time there with Cornelius, young master again came up to them, and said it was all affectation; upon which he dragged Cornelius on, at the same time giving him some strokes, at which moment the mistress appeared from the dwelling house, and having asked Cornelius what was the matter with him, he answered that he could not walk. That Cornelius was thereupon with the assistance of deponent and young master brought to the kitchen, having been previously laid down first near the cellar and then near the kitchen, where he was put into a tub, on which occasion however deponent was not present.

Done at the Drostdy of Stellenbosch, day and year as above. Commissioned Heemraden as aforesaid, together with me the Secretary, having duly subscribed the minutes hereof.

Quod Attestor.

(Signed) P. C. VAN BLOMMESTEIN, Secretary.

VII. Extract Resolution passed by the Chief Justice Sir J. A. Truter, Knight, and the Members of the Court of Justice at the Cape of Good Hope, on

Monday, the 16th September 1822.

The Chief Justice states that &c.

Having thereupon read and examined the preparatory informations in the case contra Jan Jacobus de Villiers, son

of Paul de Villiers, it was resolved, on deliberation to grant to the Landdrost of Stellenbosch a decree of summons in person against said Jan Jacobus de Villiers, and the same is hereby granted accordingly, on a charge of maltreatment of one of his father's slaves named Cornelius of the Cape, with orders to the Landdrost aforesaid to proceed forthwith in this case conformably to the resolution of the Court, in connection with the Crown Law, and thereupon to forward the records of the investigation to his legal agent, to be laid before this Court, in order that such disposition may be given respecting the further prosecution of this case as may be found meet.

An Extract hereof without resumption to be granted, and the documents returned to the Landdrost aforesaid for his information and guidance.

A true Extract.

(Signed) D. F. BERRANGÉ.

VIII. Act of Accusation in the criminal case of the Landdrost of Stellenbosch R.O. Prosecutor *contra* Jan Jacobus de Villiers, Paul's son, defendant in person in said case.

Whereas it has appeared to the Landdrost aforesaid, applicant for the Court's decree of summons in person against you, Jan Jacobus de Villiers, from the preparatory information taken in this case, that you, the defendant in person, were on Wednesday the 4th Instant at the land at your father's place situated at Great Drakenstein, where the slaves were at work under your superintendance.

That after work the slaves going home, one of them reported to you in the neighbourhood of the stable that the slave Cornelius was thirsty and faint, and that he had staggered and fallen down on the way home. That you, the defendant, being dissatisfied thereat, said that it was all affectation of Cornelius, and thereupon, because he could not speak and answer distinctly, flogged him with a quince stick, on which occasion he was held fast by Manuel and Solon. After which you the defendant in person gave orders that Cornelius should be again punished, for which purpose having been brought to a certain outdoor apartment and there entirely stripped, and

held fast by the slaves Arend, Oranje, Adrian, and Solon, he was thereupon by your orders flogged with a trace, and received many stripes. That after this second punishment you, the defendant in person, put him in irons with his hands crosswise made fast to his feet, and at the same time gave orders to Solon that Cornelius should not have any victuals, but that if he begged forgiveness and spoke better, he should then be released from the irons; which said Solon however did, without his having prayed for forgiveness, and gave him something to eat, after Cornelius had remained in that position till supper was over, and which said Solon appears to have done of his own accord and out of pity for his comrade.

That the next day, Thursday the 5th Instant, the people together with said Cornelius having repaired to the land to work where you, the defendant in person, were also present, and seeing that Cornelius worked but little (who said that his arms were sore and he was too weak) you thereupon gave him some strokes with a quince stick, and then had him held fast by the slaves Maandag and Solon, in which position you again flogged said Cornelius, and after you had done, ordered him to go and collect bushes for the purpose of being burned. That Cornelius however still not working to your satisfaction, you again gave him some blows with the stick, one of which hit him on the head, which having begun to bleed immediately, you ordered some tobacco spittle to be applied to the wound, after which Cornelius remained lying by the bushes, owing for the greatest part to weakness. That after all this had taken place, your father appeared at the land, being followed by one of the maids, named Styn, with the people's dinners, on which occasion your father having asked the reason why Cornelius's head bled, you, the defendant in person, answered "I beat him, and I must on that occasion have hit him on the head."

That your father having thereupon given orders that Cornelius should go home, he accordingly went away with Styn, when, he not walking to your satisfaction, you again gave him some strokes of the stick, after which Cornelius having proceeded as far as the burying ground, he there fell down, saying "I cannot go any further." That you, the defendant in person, having come up to the place, said, "*that it was all affectation,*" and thereupon dragged him, and again beat him. That your

mother, coming at that moment from the dwelling house, caused Cornelius to be taken care of, but which however was of little avail, as he died the next morning, Friday the 6th Instant, and was buried in the evening.

And as it therefore appears, that you, the defendant in person, have been guilty of maltreating the aforesaid slave Cornelius, likewise of putting him in irons without the consent of the magistrate, which slave died on the Friday morning following, for which crime severe punishments are prescribed according to the laws of the land,

The Landdrost aforesaid has therefore deemed it his duty, for the maintenance of the rights of the superior government, to bring you, the defendant in person, to trial before the competent Court on the charges contained in the text, conformably to the Crown Law.

Done at the Drostdy of Stellenbosch, 18th September 1822.

(Signed) D. J. VAN RYNEVELD, Landdrost.

IX. Records held before Messrs. Arend Brink Senior and Christoffel Briers, Commissioners from the Board of Landdrost and Heemraden of Stellenbosch, at the requisition of Daniel Johannes van Ryneveld, Esq., Landdrost of said District, on

Monday the 23rd September 1822.

In the criminal case of the Landdrost aforesaid R. O. Prosecutor *contra* Jan Jacobus de Villiers, Paul's son, defendant in person, in said case.

The Landdrost exhibits the preceding documents, numbered from 1 to 8; and states that after the Act of Accusation shall have been publicly read to the defendant in person, he should be summarily examined; on which the Act of Accusation being accordingly read to the Defendant in person by the acting secretary, the Landdrost examines him on the under written interrogatories, to which he answers as follows:—

1. What is your name, your age, birthplace, residence, and calling?

Answer. Jan Jacobus de Villiers, eighteen years of age, born at Drakenstein, live at my father's place situated at Drakenstein, have not any calling.

2. Do you acknowledge to be guilty of the crimes laid to your charge in the Act of Accusation, namely of maltreatment of your father's slave named Cornelius and of putting him in irons without the consent of the magistrate, and which Cornelius died the following day ?

Answer. No, the depositions against me are all false.

The defendant in person having finally promised with hand and word to appear at all times whenever required, whether at this Drostdy or before the Worshipful the Court of Justice in Cape Town sub pœna confessii et convicti.

Thus interrogated and answered at the Drostdy of Stellenbosch the 23rd September 1822. The Commissioned Heemraden aforesaid, together with me the first sworn Clerk, having duly signed the minutes hereof.

Quod Attestor.

(Signed) J. G. G. LINDENBERG.

X. Records held in the case of the death of the slave Cornelius, late belonging to Paul de Villiers.

Thursday the 19th September 1822.

Present Daniel Johannes van Ryneveld, Esqre., Landdrost of Stellenbosch, together with the Heemraden Arend Brink and Christoffel Jacobus Briers.

The Landdrost aforesaid states that on the occasion of his being last in town His Majesty's Fiscal had proposed to him to summon the District's Surgeon Robert Shand before a Commission from this Board, in order to put a few questions to him towards elucidation of this case ; and that Doctor Shand was in consequence present.

Said Doctor Shand having been called in and duly sworn, the under written interrogatories are put to him, which he answers as follows :—

1. Was there anything discoverable in the internal appearance of the brain and its membranes which showed an existing connexion or *consensus* between the external wound and the internal injury, and if so, let an accurate description thereof be given ?

Answer. There was nothing in the appearance of the brain and its membranes that indicated a direct connection or consensus between the external wound and the internal disease discovered on dissection. The brain was equally affected with inflammation, but having no direct or immediate point of communication with the external wound.

2. Is it your opinion that the death of the slave Cornelius is to be attributed to the blow he received on the fifth instant?

Answer. Certainly not. I conceive that the concussion given to the brain by the infliction of the blow may have aggravated the disease already existing there, and *thereby* accelerated its fatal termination.

This Record has been made of the above at the request of the Landdrost.

Done at the Drostdy of Stellenbosch; day and year as above.

In my presence.

(Signed) P. C. VAN BLOMMESTEIN, Secretary.

XI. Continuation of the Investigation held in consequence of the information given by Solomon, slave of Paul de Villiers, of the death of his fellow slave Cornelius of the Cape.

Friday, the 11th October 1822.

Present Messrs. Christoffel Jacobus Briers and W. Wium, Commissioned Heemraden.

The Landdrost exhibits a letter from his legal agent J. G. Lind, Esq., Deputy Fiscal, from which it appears that the Witnesses called upon by the defendant in person on his behalf must be examined; and states that they having been duly summoned in consequence, are now in waiting in order to give their evidence.

The following witnesses are hereupon successively called in and examined:—

1. Paul de Villiers, Jan's son, forty-six years of age, father of the defendant in person, who having been duly sworn, deposes as follows:—

That on Thursday the 5th September last deponent went to

the land where the people, among whom was the deceased Cornelius, were employed under the superintendance of his son Jan Jacobus (the defendant in person) plucking out bushes to clean the land. That on deponent coming there, which was about eleven o'clock, he perceived that Cornelius did not work alike with the other people, on which having asked him the reason Cornelius replied "*he was sick or felt oddly,*" without deponent recollecting which of the expressions Cornelius made use of. That deponent seeing some blood on Cornelius's head, deponent's said son informed him that he had given Cornelius some strokes with a quince switch about as thick as his finger, the last of which had by accident hit him on the head. That deponent having ordered the said Cornelius to gather bushes in the neighbourhood and make them into a heap, while the other people were at work a little farther off, he thereupon proceeded to the land a small distance from Cornelius, in order to set the people a digging, whence he perceived Cornelius go and sit down on a heap of bushes, from which he was lifted up by two of the slaves, when having walked alone for about fifty paces, he then first sat down again and then lay down on his side, whither deponent having proceeded two different times saw said Cornelius lying on the ground as if he was asleep, without, however, having spoken to him. That at noon one of the female slaves, named Styn, having come to the land with the people's dinners, deponent on seeing her coming, went for the third time to where Cornelius lay on the ground, who having stood up on seeing deponent, said in substance, "*Master, Master, Adrian told me if I pretended to be sick he would give me wine.*" That deponent then went away, having previously given orders to Styn the maid, whom he had in the meantime met at the land, to take Cornelius with her when [she went home, and that deponent thereupon, accompanied by his said son, proceeded to the house and went to dinner. That however before deponent had sat down, he sent a message to Styn saying that she must come quickly with Cornelius, and that while they were at dinner a little boy came in with a message from said Styn, saying that Cornelius would not walk, in consequence of which deponent's wife together with his said son went out after dinner was over, while deponent remained within. That the same afternoon deponent, who had company,

having gone out, perceived Cornelius sitting down by an oak tree near the back of the house, on which he was brought home and put into a little room in the kitchen, on which occasion deponent saw towards the evening that the jaws of Cornelius were stiff, whereupon deponent's wife gave him some sweet oil. That the same evening, after supper, deponent's wife came and informed him that Cornelius's pulse stood still, which deponent having found actually to be the case, he caused Cornelius to be put into a warm bath and chafed both before and behind. That when Cornelius came out of the bath, his body was quite limber, but his pulse was then good, when deponent gave orders that he should be put to bed and covered up warm, and that two of the men and two of the maids should sit up with him that night and continually give him fennel water to drink, on which deponent went to sleep. That the deponent, having arose the next morning before day and enquired how Cornelius was, the maids who had sat up with him informed deponent that he had slept the whole night, and snored, which deponent also heard, and that deponent then went to sleep again. That when deponent got up he sent to the village for Doctor Shand, while his wife remained continually with Cornelius, who however died the same forenoon. That deponent had seen Cornelius after his death, on which occasion he had caused some froth that appeared under his nose to be wiped away, and that he had him buried the same evening, having previously given orders to two of his slaves to sew the body up in his *caross* and to make the grave deep to prevent the wild beasts getting at the corpse. The deponent further declaring, that the Wednesday before Cornelius had worked with the other people the same as always, but that he had always been a very lazy and unwilling creature, who must be continually driven to his work, and that the deponent could not positively say that he had seen Cornelius beaten by his said son, either on the Wednesday or Thursday. While the deponent finally declared that he had ordered Manuel and Oranje to take some stones out of the grave that were therein, which however they did not do, the three stones having remained there, and that he deponent on the evening that Cornelius had been put into the warm bath had previously caused him to be released out of irons.

2nd. Anna Susanna Louw, wife of Paul de Villiers and mother of the defendant in person, forty years of age, who having been duly sworn deposes as follows :—

That on Thursday the 5th Instant, being at dinner, a little boy came in and reported that the slave Cornelius could not walk home. That after dinner deponent with her son (the defendant in person) having gone out, they found Cornelius lying on the ground, on which deponent having asked him what ailed him, he answered “Mistress I am poisoned,” on which deponent further asking him who did so, he replied “Oranje poisoned me.” That deponent thereupon ordered her said son and the female slave to take Cornelius by the arms and lead him home, when deponent caused him to drink some wine, in the supposition that he was intoxicated, because Cornelius had told deponent’s son that Adrian had said to him if he pretended to be sick he would give him some wine. That after Cornelius had drunk half a basin, deponent had him put to bed in a room in the kitchen, where he slept soundly till evening, when he began to snore, on which deponent called to him saying “Cornelius are you still asleep, have you not yet slept it out ?” but received no answer. That having gone again in the evening to see how Cornelius was, she caused him to be lifted up and gave him something to drink, when she perceived that his teeth were clenched fast together, on which she had his mouth forced open and a small quantity of sweet oil poured in, that the female slave named Mina, who was holding the candle, having thereupon said “Mistress, I feel very oddly, I cannot look on any longer,” deponent replied “must I always look after the sick, you can do nothing,” and then made Mina leave the room, desiring her to go away.

That the same evening after supper deponent having again gone to see how Cornelius was, found that he was stiff, in consequence of which she had him put into a warm bath, from which he was taken out quite limber ; that a glyster being then administered to him, he had a stool, on which he was put to bed, and covered up warm, and that Dorinda, one of the maids, and some of the other slaves sat up with him the whole of the night, and that she was informed he had slept well the same night.

That the next morning early deponent having gone to

Cornelius, she perceived that he was again quite stiff, on which she had him again put into a warm bath, and sent for a Doctor. That after the boy went for the Doctor, Cornelius remained about a quarter of an hour in the bath, when he was again laid in his bed and covered up warm, and that the deponent then went away. That deponent a short time afterwards sent Dorinda to enquire how he was, and she having returned saying that the froth came out of his mouth, deponent ordered her to wipe it off; and that the same forenoon being in the kitchen and hearing a noise, Dorinda informed her that his belly was convulsed, on which she saw the froth coming out of his mouth, and that a few minutes afterwards Cornelius stretched himself out and gave up the ghost, on which occasion she perceived the froth come out of both his nose and mouth.

3. Styn of the Cape, female slave of Paul de Villiers, nineteen years of age, who having promised to speak the truth and nothing but the truth, deposes:—

That on Thursday last, when she brought the deceased slave Cornelius from the land home, and had got as far as the other side of the burying ground, her mistress accompanied by her young master (the defendant in person) made their appearance, the former of whom having asked Cornelius what ailed him, he replied “Oranje has poisoned me.”

4. Abraham Jacobus Marais, twenty-five years of age, residing at Great Drakenstein, who having been duly sworn, deposes as follows:—

That some days after the slave Cornelius died a female slave belonging to Paul de Villiers, named Styn, (the 3rd witness in this record), told deponent that her mistress having met Cornelius near the house at the time she had brought him from the land, had asked him what was the matter with him, to which he answered “I have been poisoned by Oranje” (a slave of said Paul de Villiers), and that another female slave of said De Villiers, named Dorinda, had told deponent that her mistress had caused Cornelius to be put into a warm bath the same morning that he died, and that she had seen before and subsequent to his death froth coming out of both his nose and mouth.

5. Hugo Hendrik van Niekerk, twenty-seven years of age,

resident at Great Drakenstein, who having been duly sworn, deposes as follows :—

That the female slave Styn had told this deponent likewise that the slave Cornelius had said to his mistress the Thursday that he was brought home from the land, that Oranje, slave of Paul de Villiers, had poisoned him, and that the female slave Dorinda had informed deponent that on the morning Cornelius died the froth came out of his mouth ; that her Mistress had caused Cornelius to be put into a warm bath, and finally that when he was dead the froth appeared both from his mouth and nose.

Thus done at the Drostdy of Stellenbosch day and year as above, Commissioned Heemraden aforesaid, together with me the first sworn clerk, having duly signed the minutes hereof.

Quod Attestor.

(Signed) J. G. G. LINDENBERG.

XII. Extract. Resolution passed by His Honor the Chief Justice Sir J. A. Truter, and the Members of the Worshipful the Court of Justice at the Cape of Good Hope,

Thursday the 21st November 1822.

Read a Memorial from D. J. van Ryneveld, Esqre, Landdrost of Stellenbosch, exhibiting the Records of an Investigation held in the case *contra* Jan Jacobus de Villiers, defendant in person on a charge of ill treatment of one of his father's slaves named Cornelius of the Cape, and requesting the Court's disposition as to the further prosecution of this case ; said Memorial being of the following tenor : (F. I.)

Upon which, after examination of the documents exhibited, it was resolved to refer the case to the Board of Landdrost and Heemraden of Stellenbosch for Prosecution, and the same is hereby referred accordingly.

An Extract hereof to be granted and the documents returned to the R. O. Memorialist for his information and guidance.

A true Extract.

(Signed) D. F. BERRANGE, Secretary.

XIII. *Trial of Jan Jacobus de Villiers, defendant in person.*

Records held before the Board of Landdrost and Heemraden of Stellenbosch in the criminal case of the Secretary of said District R. O. Prosecutor *contra* Jan Jacobus de Villiers defendant in person on a charge of ill treatment of one of the slaves of his father Paul de Villiers, named Cornelius of the Cape.

Wednesday the 18th December 1822.

All the Members present excepting Messrs. Neethling and Myburgh, the former in consequence of relationship and the latter through indisposition.

The doors being opened and the Secretary of the District and defendant in person having appeared before the Court, the judicial prayer is read.

The R. O. Prosecutor hereupon exhibits the following documents, viz. :—

1mo. Extract. Resolution of the Worshipful the Court of Justice whereby the case is referred to this Court for Trial.

2ndo. Act of Accusation with all the preparatory information and other documents relative to the case annexed thereto.

3tio. Names of the witnesses as well for the prosecution as for the defence.

4to. Act of Inquest held on the body of the deceased Cornelius with the professional attestation and subsequent answered interrogatories of the District's Surgeon, &c.

5to. Examination of the defendant in person

The Secretary aforesaid as R. O. Prosecutor hereupon publicly reads the Act of Accusation to the defendant in person, as also his examination, and requests, as the defendant in person denies the charge, that the witnesses may be examined conformably to the 49th article of the Crown Law.

The President asks the defendant in person.

Do you still persist in your answer by which you deny having maltreated the late Cornelius, a slave of your father ?

Answer. Yes.

The Court having hereupon proceeded to the hearing of evidence both in support of the prosecution and on behalf of the defendant in person, as well that included in the pre-

paratory informations as that subsequently brought forward by the defendant in person, the several witnesses are successively called in, and make the following depositions in presence of the defendant in person :—

For the Prosecution.

Imo. Solomon of the Cape, supposed to be about thirty years of age, slave of Paul de Villiers, who having promised to speak the truth and nothing but the truth deposes as follows :—

It was on a Wednesday, that my young Master first beat Cornelius before the stable, and then he had him brought into a room and held fast by four of the slaves, when he beat him with the trace of a horse waggon, and then had him put in irons till the evening after supper, when he was released, and then he remained lying by the fire.

The next morning we went to work first at the quince hedge, but Master Jan sent us to the land to pluck out bushes, and where Master Jan beat a hole in Cornelius's head with a stick, who thereupon remained lying there. At noon Styn came to the land and took Cornelius away with her till they got under the hill, where he remained lying. I know nothing more. Cornelius died the Thursday night afterwards.

Questions by the Court to the Witness.

1. What time of the day was it when Cornelius was beaten by the defendant in person first before the stable and then in the outdoor apartment ?

Answer. It was at the dusk of the evening.

2. With what did the defendant in person beat Cornelius before the stable ?

Answer. I don't know, I was in the room, but I heard the strokes.

3. Was he flogged much or little ?

Answer. A good deal.

4. Was Cornelius beaten much or little afterwards in the outdoor room ?

Answer. Young Master flogged him a great deal in the room, but I don't know how much, for I did not count.

5. Was Cornelius flogged on the bare body or on his clothes ?

Answer. He wore nothing but a waggoner's frock and his trousers. The frock was taken off entirely, and the trousers half way.

6. What was the reason your young Master beat Cornelius that evening ?

Answer. That I don't know.

7. Why did your young Master beat Cornelius the following morning in the land ?

Answer. Because he could not work, he worked something, but he could not work in consequence of the flogging the evening before.

8. Did your young Master give him but one blow with the stick ?

Answer. No, he gave him two or three strokes. I just looked round and saw it. (Says afterwards) Master Jan beat him on the shoulders, over the head, and everywhere.

9. What o'clock was it that morning when your young Master beat Cornelius ?

Answer. It was just past eight.

10. Did you see that Cornelius was laid down on the land that Thursday morning and flogged.

Answer. No, I did not see it, for I had just gone to get a drink of water, and when I came back the other people told me of it.

11. Was anything the matter with Cornelius the Wednesday evening before he was flogged, or did he complain of anything ?

Answer. No, not that I know of, he was always healthy and worked with us, but he was too weak and could not keep up with us.

12. How did Cornelius always behave himself ?

Answer. He continually ran away.

13. With what sort of a stick did your young Master beat Cornelius ?

Answer. It was a quince stick as thick as my thumb, there was not any knob on it.

14. Did you see your young Master beat Cornelius at the burying ground the Thursday he went home with Styn from the land ?

Answer. No, I did not see that.

15. Did you see your young Master drag Cornelius on that occasion ?

Answer. No, I did not see it, but I heard it from the other people.

16. Do you know that your young Master sent for a Doctor on Friday morning ?

Answer. No, I do not.

17. When was Cornelius buried ?

Answer. Friday evening, at dusk.

Questions by the R. O. Prosecutor.

1. Were you present when Cornelius was put in irons ?

Answer. I went out at the time Master Jan so beat him, and when I came back I saw that Cornelius was confined crooked in the irons.

2. In what manner ?

Answer. (The witness shews his hands and feet together in a sitting posture.)

3. Did your young Master speak with Cornelius when he was in the irons ?

Answer. I was not present then.

Questions by the Defendant to the Witness.

1. Where were you when Cornelius was put in irons ?

Answer. I was out of the room.

2. Did you not say to me that Cornelius would run away, and did I not then tell you to put him in irons ?

Answer. No, I was not present then, I was outside.

The above questions and answers being read out to the witness, he persists in the same.

2ndo. Adrian of the Cape, supposed to be about twenty-six years of age, slave of Paul de Villiers, who having promised to speak the truth and nothing but the truth, deposes as follows :—

I was not at the stable when young Master flogged Cornelius there on the Wednesday evening ; but I was in the room where Cornelius was held fast by me, Arend, Solon, and Oranje,

and his jacket and trousers taken off. Young Master then flogged him with a trace on his posteriors, I think between twenty and thirty stripes, and then put him in irons, because as young Master said it was all pretence. I know nothing more about that evening. Thursday morning we all went to work at the land, where I did not see young Master beat Cornelius, but I saw a hole in his head into which I spit and put my hat on his head. Cornelius went home the same day at noon, and further I know not. Neither did I see young Master beat Cornelius that day at the burying ground or drag him.

Questions by the Court to the Witness.

1. For what did your young Master beat Cornelius on the Wednesday evening ?

Answer. He could not walk rightly, he could not walk to the slave house, and Master Jan said it was all pretence.

2. What sort of a trace was it with which the young Master flogged Cornelius ?

Answer. I did not particularly take notice of it, but it was the trace of a horse waggon.

3. In what manner was Cornelius put in irons that Wednesday evening, and for how long ?

Answer. With his hands and feet together in a sitting posture on the ground, how long I do not know.

4. For what was Cornelius beaten at the land on the Thursday morning ?

Answer. Because he could not work as well as we, and Master Jan desired him to carry bushes.

5. Was not Cornelius laid down that Thursday morning at the land, and flogged by your young Master ?

Answer. Master Jan flogged Cornelius that morning, but I was not present, I was at another spot.

6. Did you see the stick with which Cornelius was beaten ?

Answer. Yes, it was a quince stick without a knob on it, it was a little thicker than my thumb.

7. Did you see that Cornelius worked that day after he received the strokes on his head ?

Answer. No, he was ordered to burn bushes, but he remained lying there till noon

8. Was there anything the matter with Cornelius before he was flogged on the Wednesday evening, or did he complain of anything ?

Answer. No, he worked briskly with us that afternoon ; neither did I hear that he complained of anything. I do not know that he was sick before.

9. How did Cornelius always behave himself.

Answer. He continually ran away, he would not do any good.

10. Do you know of a Doctor having been sent for for Cornelius ?

Answer. Yes, Master sent for a Doctor, and the same morning, which was Friday, a little boy rode for a Doctor, but I do not know what o'clock it was, nor if Cornelius was then alive.

11. When did Cornelius die ?

Answer. I don't know. I went early to work that morning.

12. When was Cornelius buried ?

Answer. The same evening.

Questions by the Defendant to the Witness.

1. Did I not tell you the reason why I flogged Cornelius ?

Answer. No, Master did not say anything to me, but I heard that you said Cornelius pretended that he could not walk to the slave house.

2. Did you not hear when Solomon said to me that Cornelius would run away, that I then said he must be so long put in irons till the people came back from their suppers ?

Answer. No, that I did not hear.

3. Did not Cornelius work after I flogged him till my father came to the land ?

Answer. He worked a little at first, but afterwards he could not work any more, and went and lay down.

4. Did he not afterwards pluck out bushes ?

Answer. Before that Master beat him he plucked bushes, but not afterwards, he then collected them together.

The above questions and answers being read over to the Witness, he persists in the same.

3tio. Oranje of the Cape, supposed to be about thirty years of age, slave of said Paul de Villiers, and brother of Solomon the complainant, who having promised to speak the truth and nothing but the truth deposes as follows :—

I was not at the stable when young Master beat Cornelius, for I was in the little room, where young Master had him laid down and held fast by four of the slaves, namely me, Arend, Solon, and Adrian, and his jacket and trousers stripped off, where he flogged him on the bare posteriors with the trace of a horse waggon, but I don't know how many strokes, because that when the people said Cornelius could not walk to the slave house, young Master caused him to be put in irons with his hands and feet together, in which way he remained till the evening after supper, when he was released. The next day we all went to work at the land, where young Master again had Cornelius laid down twice and flogged him with a stick, of which one stroke hit him on the head, which began to bleed. Young Master then ordered Adrian to apply some tobacco spittle to the wound, which he did and also put his hat on Cornelius's head. Cornelius then remained at the land till noon, when old Master and Styn, one of the maids, came there, on which he went home with Styn, but he did not get farther than the burying ground at the end of the barley field, where he remained lying till after dinner, when young Master had him brought home, but I was not present on that occasion, as I was on the land, and at too great a distance to see what took place. I know nothing further except that about eight o'clock on Friday morning I was called to assist in putting Cornelius into a warm bath. I did not then know if he lived or not, but young Mistress told me he still breathed, they also held a looking glass before his face, because they could not get anything down his throat. Cornelius was then put to bed, and I went away to the land. I know nothing further, than that I heard that morning that Cornelius was dead, and he was buried the same evening. (Says afterwards) Cornelius was laid down only once at the land, and once young Master beat him standing, when he received the blow on his head, on which occasion old Master led him a little way to near the barley field, and then Styn took him further with her to the burying ground, where he fell down.

Questions by the Court to the Witness.

1. With what did the young Master beat Cornelius on the Thursday morning at the land, where he was laid down ?

Answer. With a stick on his jacket and trousers, and not on his naked body.

2. Was your old Master present on that occasion ?

Answer. No, old Master came afterwards from the house, and then Cornelius had the wound on his head.

3. Was there anything the matter with Cornelius before he was flogged on the Wednesday evening, and did he complain of anything ?

Answer. No, that I do not know, neither did I hear that he complained of anything before.

4. How did Cornelius always behave himself ?

Answer. He was a little naughty, he used always to run away, young Master used to force him to work, and he was too weak, and therefore he ran away. (Says afterwards) He had rings on his legs.

5. When were those rings knocked off ?

Answer. One of them he had knocked off before, and we took off the other the same Thursday evening when he was brought home from the land.

6. Why were the rings taken off ?

Answer. To ease his foot, his foot was raw where the ring had been.

7. Did Cornelius say anything the evening before he died ?

Answer. No, I know he did not say anything.

8. Do you know whether your old Master sent for a Doctor ?

Answer. No, the same morning they put Cornelius in the tub of warm water there stood a boy there ready with a horse, but I don't know where he was going to, old Master was in the room writing a letter.

9. Did your young Master give Cornelius but one blow on the head ?

Answer. I do not know that young Master beat Cornelius on the head, but I know that Adrian saw the hole where the blood came from, and Adrian then by order of young Master

spit into it. (Says afterwards) Young Master desired Adrian to look where the blood came from, when Adrian said there was a hole in the head.

10. What kind of a stick was it with which the young Master beat Cornelius ?

Answer. It was a quince stick as thick as my thumb, there was not any knob on it.

11. When was Cornelius buried ?

Answer. The same evening of the day that he died.

12. For what reason did your young Master beat Cornelius on the head ?

Answer. Because he could not work well. (Says afterwards) He was flogged the evening before, and his work was to pluck out bushes, and I believe his body was sore.

13. What sort of a trace was it with which your young Master flogged Cornelius on the Wednesday evening ?

Answer. It was a flat trace made of buffalo hide. Young Master must have given him twenty or thirty strokes of it.

14. What size was the trace ?

Answer. Somewhat thinner than my little finger and about two fingers in breadth.

15. Did you see your young Master beat Cornelius near the burying ground and drag him along ?

Answer. No, I stood too far off at the land.

Questions by the R. O. Prosecutor to the Witness.

What did your young Master say in the little room before he flogged Cornelius ?

Answer. Young Master said I shall shew this evening that I am Cornelius's master.

2. What did your young Master say when Cornelius was put into irons ?

Answer. He said when he speaks properly you must release him, but as long as he speaks within his mouth Solon must leave him in the irons.

3. Did Cornelius not pray to be released ?

Answer. Yes, he did very much, and then Solon released him. It was a little cold that evening.

Questions by the Defendant to the Witness.

1. Did you not see the Wednesday evening that Cornelius was punished in the little room that I had his jacket entirely stripped off, but his trousers only pulled down ?

Answer. Yes.

2. Did you not hear when Solomon said to me that Cornelius would run away, that I then said Cornelius must be so long put in irons till the people came from the house with their suppers ?

Answer. No, but young Master said to me come we shall now contrive something else, we shall make him fast crooked.

3. Was not Cornelius out of the irons when I came from the stable ?

Answer. Yes, he was taken out of irons after supper.

4. Were you then so soon done your suppers while I put up the horses in the stable ?

Answer. Yes, for the slave who took care of him had fetched his supper, and I was then done and gone to lay down.

5. Did you not see that it was a switch with which I flogged Cornelius on the land, and you say it was a stick ?

Answer. It was a stick as thick as my thumb.

6. Did you see a hole in Cornelius's head, and the blood coming out of it ?

Answer. Yes, after Adrian had spit into it I saw the hole, but it still continued to bleed, and when old Master came to the land he asked where the hole came from, and then young Master said he had done it, on which old Master replied " must you then strike him there ? "

After I flogged Cornelius, did you leave your work to see the hole in his head ?

Answer. No, we worked next one another.

As Cornelius was weak, did I not always make him work less than the other people ?

Answer. Yes, he always worked less.

The above questions and answers being read over to the witness, he persists in the same.

4. Solon, from Mozambique, supposed to be about thirty-five years of age, slave of said Paul de Villiers, who having

promised to speak the truth and nothing but the truth, deposes as follows :—

On Wednesday evening when it was cold, Cornelius went into a ditch and drank cold water, for which I scolded him, and then he went towards home staggering at the time, and he fell down on the way. When he came to the stable young master beat him there, when Manuel and I held him fast. Afterwards he was brought into the little room and again laid down and held fast, when young Master flogged him plenty on his bare posteriors, but I cannot tell the number of strokes. He then had him put in irons with his hands and feet across one another, and told me that if Cornelius begged and prayed I should release him. Young Master also told me on that occasion that I must not bring him any victuals before he came, and then he went away. Cornelius afterwards said to me it was so cold that I must let him out of the irons, on which I took his hands out, and brought him to the fire to warm himself. The next morning we all went again to the land, where young Master flogged Cornelius with a stick, first standing with his clothes on, and then he had him held fast by two of the slaves and again beat him standing. We afterwards saw that Cornelius had a hole in his head which was bleeding, where young Master must certainly have hit him, and to which tobacco spittle was applied. Cornelius then remained at the land till noon, when Styn, one of the maids, came there, with whom he went home, but when he came near the house he could not walk any farther. Young Master then came up to him, and Styn took him under the arm and led him home. The same evening we put Cornelius into a bath, and the next morning we all went together to the land, where one of the other people came and told us that Cornelius was dead.

Questions by the Court to the Witness.

With what did your young Master beat Cornelius before the stable ?

Answer. With a stick.

With what was Cornelius flogged in the room ?

Answer. With the trace of a horse waggon, it was about three fingers in breadth, but it was not so thick.

Why did your young Master beat Cornelius that evening ?

Answer. Because he could not walk and did not go quickly to the house.

What was the reason that Cornelius could not walk, was he then sick before ?

Answer. From the evening that he had been in the ditch to drink water he always staggered so.

Did Cornelius complain of anything before, or was there anything the matter with him ?

Answer. He always complained that the rings hindered him, nothing else.

When were the rings taken from his legs ?

Answer. The same evening that he was brought home.

Why did your young Master beat Cornelius at the land ?

Answer. Because he could not work well.

Did your young Master beat Cornelius much at the land ?

Answer. Not so much.

How thick was the stick with which he beat Cornelius ?

Answer. As thick as my great toe.

Did your young Master give Cornelius only one stroke on the head ?

Answer. Yes.

How did that happen ?

Answer. I don't know.

Did Cornelius work after he was flogged at the land ?

Answer. No, he could not then work any more, he went and made a fire and sat down by it.

Was your old Master present at any of these floggings ?

Answer. Old Master was at the land, but he was at a distance when young Master beat Cornelius.

How did Cornelius always behave himself ?

Answer. He was bad to work, he was a rogue, he ran away continually.

Do you know of your Master having sent for a Doctor ?

Answer. We were at work, but when we came home we heard it.

Did Cornelius speak on the Thursday evening ?

Answer. He was too bad, he could not speak.

When did Cornelius die ?

Answer. I don't know rightly.

When was he buried ?

Answer. The evening of the day he died.

Question by the R. O. Prosecutor to the Witness.

What was the reason of Cornelius going that evening to fetch water ?

Answer. He said he felt very oddly, and therefore drank the water ; and then he went staggering home.

Question by the Court to the Witness.

Did you see that the young Master beat and dragged Cornelius at the burying ground ?

Answer. We were far off and could not see.

Questions by the Defendant to the Witness.

Did I not beat Cornelius before the stable with a trace only and not with a stick ?

Answer. First with a trace, and then with a stick.

The defendant in person remarks hereupon that it is more than he knows.

Did I not tell you the Wednesday evening the reason why I flogged Cornelius ?

Answer. Master said it was because Cornelius pretended he could not walk.

Was not Cornelius more lazy that day in his work than usual?

Answer. He was always lazy, he was lazy that day.

Did you not hear that Solomon said to me Cornelius would run away, and that I then gave orders he should be put in irons ?

Answer. No, that I did not hear.

When I had Cornelius held fast at the land and flogged him, was it not with a switch and not with a stick ?

Answer. It was with a stick as thick as my finger, but I did not see that Cornelius was laid down.

Did you hear that I said they must apply tobacco spittle to the wound on Cornelius's head ? Did I not only say they must spit on it ?

Answer. Master did not say so, but Adrian applied tobacco spittle to it.

The above questions and answers being read over to the Witness, he persists in the same.

5to. Maandag from Mozambique, supposed to be about forty years of age, slave of said Paul de Villiers, who having promised to speak the truth and nothing but the truth, deposes as follows :—

I know nothing about the flogging on Wednesday, for I was not present. I only heard of it ; but on Thursday I was at the land, and there I saw young Master beat Cornelius twice with a stick, because he did not work speedily, on account of the rings he had on his legs ; once while he was standing, and the second time in the same manner, but he was then held fast by me and another of the slaves. Cornelius after that remained on the land, and then we saw that there was a hole in his head out of which the blood came. Adrian put some tobacco spittle to it. At dinner time Styn, one of the maids, came to the land, and Cornelius went away with her to near the burying ground, where he sat down. We then saw young Master and the Mistress come from the house, and go to Cornelius, when young Master pulled him up by the hand and beat him with a stick, on which Cornelius was brought slowly to the house, and when we came home in the evening he was put into a bath, when he attempted to speak, but nobody could understand him, and I don't know anything further, excepting that while I was employed the next day at the land I was informed that Cornelius was dead, and he was buried the same evening at the burying ground.

Questions by the Court to the Witness.

Why did your young Master beat Cornelius at the land ?

Answer. Because he could not work well, the rings pinched his feet.

Was your old Master present when Cornelius was flogged at the land ?

Answer. Yes, but he was far off.

Was there anything the matter with Cornelius before that flogging, or did he complain of anything ?

Answer. No, he was not sick, he was always well.

How did Cornelius always behave himself ?

Answer. He was a good boy, but he continually ran away into the bushes, and that was the reason Master was so angry.

Did you see your young Master strike Cornelius on the head ?

Answer. No, but I saw his head bleeding.

What kind of a stick was it with which your young Master beat Cornelius ?

Answer. It was a quince stick of about an inch thick.

Did Cornelius work after he received the beating at the land ?

Answer. No, he did not work afterwards, and Styn took him away, but when he got to the burying ground he lay down and was not brought home till towards the evening.

When were the rings taken from Cornelius's legs ?

Answer. The same evening that he was brought home from the land.

Question by the Defendant to the Witness.

Were you at the house the Thursday evening that Cornelius was brought home ?

Answer. I was at the land.

The above questions and answers being read over to the Witness, he persists in the same.

6to. Manuel from Mozambique, supposed to be about twenty years of age, slave of said Paul de Villiers, who having promised to speak the truth and nothing but the truth, deposes as follows :—

On the evening of Wednesday I saw that Cornelius was flogged, standing by young Master near the stable where he was brought, because he could not walk farther, he was held fast by two of the slaves and beaten first with a stick, and then with a trace, after which he was taken into a little room, and where he was again flogged, but I was not present, I only heard him cry out and afterwards saw that he was in irons with his hands and feet crosswise. The next morning we went again to the land, where we were employed in carrying bushes, when Cornelius went and sat down. Young Master saw it, and then had Cornelius laid down and flogged with a stick, on which occasion young Master struck a hole in Cornelius's head.

Cornelius then remained at the land till noon, when Styn, the maid, took him away with her, but he did not get farther than the burying ground, where he lay down. I then saw from the land Mistress and young Master come from the house, and go to Cornelius, on which occasion young Master again beat him with a stick, but he did not drag Cornelius.

Questions by the Court to the Witness.

For what did your young Master beat Cornelius at the stable ?

Answer. Because he could not walk quickly.

Why did he beat him at the land ?

Answer. Because he could not work well.

How often was Cornelius flogged at the land ?

Answer. Once.

How thick was the stick ?

Answer. As thick as the lower part of my thumb.

Did your young Master beat Cornelius much at the land ?

Answer. Plenty on his trousers.

Was Cornelius much flogged at the stable ?

Answer. Yes, first with a stick, which young Master said he did not feel, and then with a trace.

Did you see Cornelius come from the land on the Wednesday evening ?

Answer. Yes, I stood at the stable.

Could not Cornelius walk well then ?

Answer. He staggered like one that was drunk.

Was Cornelius sick then ?

Answer. Of the flogging, young Master beat him every day.

Had Cornelius rings on his legs that evening ?

Answer. Yes, but they were taken off, when he was sick.

How many blows did your young Master give Cornelius on the head ?

Answer. Just one.

Was your old Master at the land when young Master flogged Cornelius ?

Answer. Old Master did not come till young Master had done.

How came your young Master to strike Cornelius on the head ?

Answer. He stooped down to take up the bushes, on which Master hit his head.

Was Cornelius sick the Wednesday evening before he was flogged, or did he complain of anything ?

Answer. No, he was never sick, he always worked with us, he did not complain till Thursday after the flogging the evening before, he then said he was sick.

Of what did he complain ?

Answer. He said his body was lame.

How did Cornelius always behave himself ?

Answer. He was a good boy, but he frequently ran away for nothing.

Do you know of your Master having sent for a Doctor when Cornelius was so sick ?

Answer. That I don't know, I was at my work.

Did Cornelius speak the Thursday evening when he was brought home from the land ?

Answer. No, he was very ill, he could not speak.

When did Cornelius die ?

Answer. The next morning when David came to the land with the victuals he said that Cornelius was dead.

When was Cornelius buried ?

Answer. The same evening.

Question by the R. O. Prosecutor to the Witness.

What did your young Master say to Cornelius when he was put in irons ?

Answer. Young Master said if Cornelius asked for victuals they must say Mistress had none, and that he should wait till the other people were done.

Questions by the Defendant to the Witness.

Was Cornelius beaten on the Wednesday while he was at work, and did he then continue his work ?

Answer. Yes.

Was old Master at the work on the Wednesday ?

Answer. Yes.

Did not I help Cornelius in his work, and did he work briskly or lazily that day ?

Answer. Yes, Master did help him, he always worked slowly and was always behindhand with his work.

The above questions and answers being read over to the Witness, he persists in the same.

7th. Arend of the Cape, supposed to be about thirty years of age, slave of said Paul de Villiers, who having promised to speak the truth and nothing but the truth, deposes as follows :—

I was only present when Cornelius was flogged by young Master in the little room, which was on his bare posteriors, with a trace about three fingers in breadth and as thick as my little finger, he received about thirty strokes, because he could not walk well and said he was sick. Cornelius was put in irons the same evening by young Master's order ; but I know nothing about the flogging at the land, as I was not present, neither do I know when Cornelius died, but he was buried the same evening that he died.

Questions by the Court to the Witness.

Did you see Cornelius come from the land the evening after he was flogged ?

Answer. Yes, he was behind us, at first he walked well, but when he got into the road he said to Solon that he felt very oddly.

Was there anything the matter with Cornelius before he was flogged on the Wednesday evening, or did he complain of anything ?

Answer. He did not say anything in my presence. He worked well with us that Wednesday at the land.

How did Cornelius always behave himself ?

Answer. He continually ran away.

Where were you the following day when Cornelius was flogged on the land and received the blow on his head ?

Answer. I was at work near the house.

Were you not at all at the land that day ?

Answer. Yes, but it was late when I went there ; it was almost noon.

When you came to the land did you see Cornelius ?

Answer. Yes, he was still there.

What was he about there ?

Answer. He carried bushes, but he could not do it properly, he sat quite on one side.

Did you see on that occasion that Cornelius had a wound in his head, and that it bled ?

Answer. No, I did not take notice, I worked at some distance from him.

Did you see Cornelius go home ?

Answer. Yes, with Styn the maid, but he remained a long time on the road, and I also saw that he stopped long with Styn at the burying ground.

Did you see on that occasion that your young Master beat and dragged Cornelius along at the burying ground ?

Answer. No, that I did not see.

Did you see Cornelius that evening when you came home from the work ?

Answer. Yes.

How was he then ?

Answer. He sat in the kitchen against the wall by the fireplace, he was weak ; he was very bad and could scarcely speak.

Had he still the rings on his legs on that occasion ?

Answer. Yes, but they were taken off the same evening.

Questions by the Defendant to the Witness.

Did you not hear Solomon say to me that Cornelius would run away ?

Answer. No, that I know nothing of.

When I came back from the stable between 6 and 7 o'clock that evening, was not Cornelius then loose ?

Answer. I don't know, for I was already gone.

The above questions and answers being read over to the Witness, he persists in the same.

8th. Flux, from Mozambique, supposed to be about twenty-six years of age, slave of said Paul de Villiers, who

having promised to speak the truth and nothing but the truth, deposes as follows :—

I was present on Wednesday evening when young Master beat Cornelius before the stable, because the slave who was with him said he could not walk any farther. He was first flogged with a stick and then with a trace on his naked body, when he was laid down. I know nothing of the flogging in the little room, for I was not present, neither do I know of Cornelius having been put in irons, but I was present the next morning at the land where Cornelius and the other people were at work. When I came there I saw that Cornelius had a hole in his head, which was bleeding ; Cornelius was then employed in gathering bushes, but not being able to do it, my young master, who just came there, said he was lazy, and gave him some strokes of his stick. Cornelius was then held fast by Solon and Maandag, when young Master again beat him with the stick. At noon Styn came to the land, and took Cornelius away with her, but he did not get farther than the burying ground, where I saw that young Master beat him again and dragged him from the place.

Questions by the Court to the Witness.

How far is the burying ground from the place where Cornelius worked at the land ?

Answer. As far as from this to the house of Abraham de Villiers (being a distance of about 400 paces).

Did you see that Cornelius was laid down at the land ?

Answer. Yes.

Was Cornelius flogged much or little on that occasion ?

Answer. I don't know, I did not count.

What was Cornelius about when you came home on Thursday evening ?

Answer. He was then very bad, and lay in a little back room in the kitchen. After supper one of the slaves came and called me, and said I must sit up with Cornelius. I remained by him the whole of the night with the slave August, but he never spoke. The next morning early one of the other slaves awakened me, for Cornelius had dirted himself ; he then uttered a curious sound, and afterwards died.

When was Cornelius buried ?

Answer. The same evening he died.

Was your old Master present at any of the abovementioned floggings ?

Answer. Yes, he was below on the land, but was far off from us.

Did Cornelius complain of anything before he was flogged on the Wednesday evening, or was there anything the matter with him ?

Answer. No, he was always well before, but a long time before young Master beat him he was one day sick.

What was the matter with him then ?

Answer. That I don't know.

How did Cornelius always behave himself ?

Answer. Cornelius was a town slave and could not work with us, and young Master used to force him to work the same as we, and that is the reason he was always in the bushes.

Do you know of your old Master having sent for a Doctor on the Friday morning to see Cornelius ?

Answer. Yes, on Friday morning, when Cornelius was put into the bath, the little boy went to call Doctor Shand, but when the Doctor came Cornelius was dead and had been brought into the waggon house.

What kind of a stick was it that young Master beat Cornelius with ?

Answer. It was about as thick as my great toe.

Had Cornelius rings on ?

Answer. Yes, but the evening before the night that I sat up with Cornelius the rings were knocked off in the forge by master's orders.

Did you see Cornelius come from the land that Wednesday evening ?

Answer. Yes.

How was he then ?

Answer. He could not walk rightly, for he had the rings on his legs.

Question by the Defendant to Witness.

Did I not always allow Cornelius to work less than the other people ?

Answer. Young Master would always have that Cornelius should work alike with me, but he could not.

The above questions and answers being read over to the Witness, he persists in the same.

9th. David of the Cape, supposed to be about twenty-two years of age, slave of said Paul de Villiers, who, having promised to speak the truth and nothing but the truth, deposes as follows :—

I know nothing about the flogging on the Wednesday evening, but the next morning after I had put the house to rights, I went with young master to the land, where I first worked at the quince hedge, and then went to where Cornelius and the other people were gathering bushes. Young Master also came there, and beat Cornelius with a stick, because he could not speak plainly and because his legs were lame. I did not see that young Master struck him on the head, but I saw the blood, and afterwards when old Master came he asked where the blood came from on Cornelius's head, to which young Master answered that he had hit him by accident and given him a scratch there. Afterwards when old Master went to the other part of the land, young Master had Cornelius laid down and held fast by Solon and Maandag, and he again beat him with the stick. At noon Styn, the maid, came to the land with the people's dinners, with whom Cornelius went away, but when he got to the burying ground he remained there till the afternoon, when young Master lifted him up by the arm and brought him home.

Questions by the Court to the Witness.

How often did you see that Cornelius was flogged by your young Master on the Thursday morning at the land ?

Answer. Three times, and the third time he fell down, on which young Master called to two of the slaves and had him held fast.

Was Cornelius flogged much or little on that occasion ?

Answer. I don't know how much, for when young Master began to flog him I went away to gather bushes.

Did you see Cornelius come home on the Wednesday evening before ?

Answer. No.

Was Cornelius always a healthy boy, and was there anything the matter with him, or did he complain of anything before ?

Answer. No, he was always a healthy boy.

What sort of a stick was it with which Cornelius was flogged ?

Answer. It was a quince stick about an inch thick and without a knob on it.

Did Cornelius work at the land after he was flogged ?

Answer. No, he remained sitting at a spot there till Styn the maid came at noon.

Did you see him the same evening ?

Answer. Yes, he lay in the kitchen, and was very ill, and they put his feet into warm water.

When did Cornelius die ?

Answer. The next morning.

When was he buried ?

Answer. The same evening.

Was a Doctor sent for that morning to come and see Cornelius ?

Answer. Yes, before Cornelius died a little boy rode for a Doctor, but when the Doctor came, Cornelius was dead.

Had Cornelius rings on his legs ?

Answer. Yes.

When were the rings taken off ?

Answer. The evening before he died.

How far is the burying ground from the place where you were at work at the land ?

Answer. (The witness points out a distance of about 400 paces).

Question by the Defendant to the Witness.

Did I not always give Cornelius less work than the other people ?

Answer. Some days he got less work than we.

The above questions and answers being read over to the Witness, he persists in the same.

10th. August of the Cape, supposed to be about twenty-five years of age, slave of said Paul de Villiers, who having

promised to speak the truth and nothing but the truth, deposes as follows :—

I know nothing of Cornelius having been beaten on Wednesday evening, neither that he was put in irons. The next morning about 8 o'clock I went with old Master to the land, when I saw that Cornelius had a hole in his head, and that it bled, Cornelius was at that time carrying bushes, and then young Master came and gave him four strokes with a stick. Cornelius brought a load of bushes and made a heap of them, when young Master caused him to be held fast by Solon and Maandag, but before young Master began to strike I went away. Master flogged him both times, because he threw the bushes down and then stood still. Styn afterwards came with the people's dinner, and old Master first led Cornelius a little way, and Styn, after she had given the people their victuals, took Cornelius home with her, but he did not get farther than the burying ground, where he remained. In the afternoon first young Master, and then my Mistress, came there, when Cornelius was brought home, but I did not see that young Master beat or dragged Cornelius on that occasion. I sat up that night with Cornelius; when he was put into a warm bath he was very bad, and did not speak the whole night, till the next morning at daylight, when he twice uttered some very odd sounds, and that morning about 9 o'clock he died, and was buried the same evening.

Questions by the Court to the Witness.

Where was your old Master when young Master flogged Cornelius at the land ?

Answer. He was at the other side of the land.

How thick was the stick with which young Master beat Cornelius ?

Answer. That I cannot say for truth, for I did not take notice of it.

Was Cornelius sick before, or did he complain of anything ?

Answer. I don't know that he complained of anything; he was always well and in the work.

How did Cornelius always behave himself ?

Answer. He was always a bad boy, and continually ran away.

Do you know of Cornelius having had rings on ?

Answer. Yes, and the same night that he was sick they were knocked off.

Did Cornelius continue to work after he was flogged at the land ?

Answer. No, he did not work any more.

Questions by the Defendant to the Witness.

When you came with my father to the land, was not Cornelius at work ?

Answer. Yes, he was plucking out bushes with the other slaves.

Did Cornelius any one day keep up with the other people in the work ?

Answer. No, he was always behind and we beforehand.

Were you at the work on the Wednesday ?

Answer. No.

The above questions and answers being read over to the Witness, he persists in the same.

11. Styn of the Cape, supposed to be about twenty-five years of age, slave of said Paul de Villiers, who having promised to speak the truth and nothing but the truth, deposes as follows. (This Witness having been also called upon by the defendant in person, and as such examined).

On Thursday noon I went with the victuals to the land where the people were at work. When I came there, old Master desired me to apply some wine to Cornelius's head, which I did, when I saw that his head was bloody, but I did not perceive the wound. I afterwards led Cornelius away, but we did not get far when young Master gave him three strokes with a stick. I then proceeded with Cornelius and brought him as far as the burying ground, where he fell down, shortly after which young Master came up and said it was all pretence, and again struck him with the stick twice, and dragged him forwards a little way. My old Mistress and young Mistress then came and asked him what ailed him, to which

he answered that Oranje had poisoned him, on which they carried him home. He however lay down, and then I applied a handkerchief with wine to his head, and that is all I know about it, excepting that the next morning I heard that Cornelius was dead.

Questions by the Court to the Witness.

Had Cornelius rings on his legs when you brought him home ?

Answer. Yes.

Do you know when the rings were knocked off ?

Answer. No.

How far is the burying ground from the land ?

Answer. (Witness points out from the Drostdy to Mr. Faure's house, being about 300 paces).

How thick was the stick with which your young Master beat Cornelius ?

Answer. An inch thick.

Was there a knob on it ?

Answer. No.

Question by the Defendant to the Witness.

When you came to Cornelius at the land, had I not already gone home with my father ?

Answer. Old Master went home, but young Master remained behind.

The above questions and answers being read over to the Witness, she persists in the same.

Witnesses on behalf of the Defendant in person.

Imo. Paul de Villiers (father of the defendant), forty-six years of age, who having been duly sworn deposes as follows :—

On Thursday the 5th September last I proceeded to the land where the people together with the late Cornelius were employed in plucking out bushes under the superintendance of my son. When I came there, which was about eleven o'clock, I saw that Cornelius was behind in his work, when hearing

him say that he felt very oddly, I looked and perceived some blood on his head, on which my said son Jan said that he had hit him by accident on the head with a quince stick about a finger thick. I then ordered Cornelius to make the bushes into a heap, while I went to another part of the land where they were digging, whence I saw Cornelius sitting down, on which two of the slaves lifted him up and took him a little way, but he sat down again and then lay down. I went two different times up to Cornelius, when I saw that he lay just as if he was asleep; when Styn, one of the maids, brought the people's dinner to the land at noon, I went the third time to Cornelius, when he said "Master, Master, Adrian said that if I pretended to be sick he would give me wine," on which I desired Styn to take Cornelius to the house with her, while I and my said son went home and sat down to dinner. After dinner one of the slaves came to me and reported that Cornelius could not walk, on which my wife and said son went out, while I remained within. In the afternoon having gone out I saw Cornelius sitting against an oak tree near the house, on which he was brought into a little room in the kitchen, and in the evening I perceived that his jaws became stiff, on which my wife gave him some sweet oil. After supper my wife having informed me that Cornelius's pulse stood still, which I found to be the case, we had him put into a warm bath and chafed, both before and behind. When he came out of the bath his body was quite limber, but his pulse was good, on which he was put to bed, and four slaves by my orders sat up with him the whole of the night, and whom I desired to give him fennel water continually to drink. I then went to bed. The next morning when I awoke, I first heard that Cornelius had slept soundly that night, but that he had snored, which I then hearing myself I immediately sent a boy on horseback to the village to call Doctor Shand, but the Doctor did not come till noon, when Cornelius was dead, during all which time my wife took care of him. After he was dead, I perceived white froth under his nose, and I caused the body to be buried the same evening, on which occasion I directed the people to bury the corpse in a Caross and to dig the grave deep on account of the wild beasts, and also to remove some stones that were in the grave, which latter however was not done. The evening

before Cornelius died I caused the rings which he had on his legs to be knocked off. Cornelius was always lazy and unwilling in his work, and therefore was always obliged to be driven. The deponent positively declaring that he did not see his said son (the defendant in person) beat or maltreat Cornelius either on the said Wednesday or Thursday.

Question by the Court to the Witness.

Had you Cornelius buried with the previous knowledge of the Field Cornet ?

Answer. No, but it was with the previous knowledge of the District Doctor, who gave me permission to do so. I asked him if it was necessary that I should acquaint the Field-cornet of it, but he said it was not.

The R. O. Prosecutor remarks that the Witness having been Fieldcornet himself, ought to have known better.

The defendant in person declares not to have any questions to ask this Witness.

The above evidence being read over to the Witness, he persists in the same.

2^{ndo}. Anna Susanna Louw, wife of Paul de Villiers (the preceding witness), forty years of age, who having been duly sworn, deposes as follows :—

While we were at dinner on Thursday the 5th September, report was made that Cornelius could not walk home; on which I and my son Jan (the defendant in person) went out and saw Cornelius lying down. I said “Cornelius, what is the matter with you?” to which he answered “I have been poisoned by Oranje.” My son and one of the maids then took Cornelius under the arms and brought him home, when I gave him some wine to drink, in the supposition that he was drunk, as my husband had informed me that the slave Adrian had said to Cornelius “*if he would pretend to be sick he would give him some wine.*” After he had taken the half, he was brought into a little room in the kitchen, when hearing him snore, I called to him, but he gave me no answer. Towards the evening I caused him to be lifted up and gave him something

to drink, when I perceived that his teeth were locked fast together; I however had his mouth forced open, and poured some sweet oil down his throat, on which occasion one of the maids named Mina (the wife of Oranje) who held the candle having said "Mistress I feel so oddly, I cannot see it any longer," I made her leave the room. The same evening after supper I went again to Cornelius, when I found that he was entirely stiff, on which I had him put into a warm bath, out of which he came quite limber. I then caused a glyster to be administered, which was followed by a stool, and then he was put to bed and covered up warm, and some of the slaves sat up with him that night, from whom I heard he had slept well. The next morning early I found that Cornelius was again stiff, when I caused him to be put to bed again. A Doctor was then sent for, and Cornelius in the meantime was put into the warm bath up to his knees, he was then covered up and I went away. The same forenoon Dorinda, one of the maids, reported to me that froth came out of Cornelius's mouth, and hearing a bustle I went to Cornelius, when I saw the froth coming out of his mouth, which I caused to be wiped off. A few minutes afterwards he stretched himself out and died, when I saw white froth coming both out of his nose and mouth.

The Defendant in person declares not to have any question to ask this witness. The above evidence being read over to the Witness, she persists in the same.

3tio. Abraham Johannes Marais, Jacobus's son, twenty-five years of age, who having been duly sworn, deposes as follows :—

Some days after the death of Cornelius, late Slave of Paul de Villiers, (father of the defendant in person), I was informed by a female slave named Styn, also belonging to said De Villiers, that her Mistress having come up to said Cornelius at the time she (Styn) was bringing him from the land, and having asked him "what ailed him," he Cornelius had answered "I have been poisoned by Oranje" (also a slave of said De Villiers). I likewise heard from Dorinda, another slave of said De Villiers, that on the same morning Cornelius died her mistress had caused him to be put into a warm bath, on which occasion the froth came out of both his nose and mouth.

The defendant in person declares not to have any question to ask this witness.

The above evidence being read over to the Witness, he persists in the same.

4to. Hugo Hendrik van Niekerk, Hugo's son, twenty-seven years of age, residing at Great Drakenstein, who having been duly sworn, deposes as follows :—

I have heard from the female slave named Styn, belonging to Paul de Villiers, that the late Cornelius, on coming home with her from the land, had told his Mistress on that occasion that he had been poisoned by Oranje, another slave belonging to said De Villiers. I also heard from the maid called Dorinda, who is likewise a slave of his, that on the morning Cornelius died the froth came out of his mouth and nose, and that Cornelius had been put into a warm bath that morning.

The Defendant in person declares not to have any question to ask this Witness.

The above evidence being read over to the Witness, he persists in the same.

Thereupon appears in consequence of a summons from the President, Doctor Robert Shand, District's Surgeon, who having been made acquainted with the reason of his appearance and thereupon duly sworn, answers to the under written interrogatories as follows :—

Is it your opinion that had the blow not been given to the boy Cornelius, it is possible that he would have recovered from the inflammation discovered on dissection, according to your statement ?

Answer. Yes, I think that if medical assistance had been called in in time, he would have recovered, because it is not invariably a fatal disease.

What do you suppose in this case to be the principal cause of the inflammation ?

Answer. There are various causes capable of producing inflammation in the brain, among which are exposure to excessive heat, sudden changes of temperature, exposure of the head to the rays of a powerful sun, the influence of poisonous substances in the stomach, external violence,

drunkenness or the abuse of spirituous liquors, either of these have been known to produce inflammation in the brain.

If the boy Cornelius had not received the blow, what length of time do you suppose he might have lived.

Answer. From the period the disease supervened he might have lived perhaps three or four days, conceiving from the appearance discovered on dissection that it had been a peculiar violent attack of the disease in question.

Would medical assistance have saved the boy, had it been called in previous to the infliction of the blow ?

Answer. Had medical assistance been called in time, or at the commencement of the disease, it might certainly have been cured, for it is not necessarily fatal.

Would medical assistance in your opinion have saved the boy after the infliction of the blow, if called in ?

Answer. The disease being farther advanced at the period of the blow, it is difficult to give a decided opinion on this point.

Is inflammation of the brain always so rapid in its progress as the case in question ?

Answer. It is certainly so in very many cases.

What can be the cause that fluid blood which has been discovered by the Commission in the brains of the slave Cornelius could have appeared there ?

Answer. Fluid blood is not an uncommon appearance in inflammation in the brain, it might be the consequence of the ruptures of a blood vessel or the consequence of avaration in the fine blood vessels of the brain, proceeding from any of the causes before mentioned which I have enumerated.

Did you give Mr. De Villiers permission to bury the slave boy Cornelius ?

Answer. I have done it in this case, as I have done it in many others, not being aware of the Colonial Law in reference to that subject, not suspecting that there was any cause of ill treatment in the case in question, and simply supposed that he died of a common inflammation of the brain. In any other point I never could have presumed to give such a permission.

Did you tell him that it was not necessary to acquaint the Fieldcornet of it ?

Answer. I did, because I have always entertained the idea

that when a slave dies of any common complaint it was not necessary to report him to the Fieldcornet.

Did you know at that time of the wound which the slave Cornelius had on his head ?

Answer. I did not.

The above questions and answers being read over to the Witness, he declares to persist therein.

The R.O. Prosecutor requests that the investigation in this case may be declared closed.

Question by the President to the Defendant.

Have you anything further to say in this case ?

Answer. No.

The Act of Inquest, the professional certificate of Doctor Shand, and his sworn examination are hereupon publicly read.

Landdrost and Heemraden declare the Investigation of this case closed, and direct the R. O. Prosecutor to make such claim and conclusion against the defendant in person as he may deem advisable.

The R. O. Prosecutor says,

Worshipful President and Members,—It has appeared to me from the investigation held in this case, that Jan Jacobus de Villiers, the defendant in person, was on the land at his father's place, situated at Great Drakenstein, on the 4th September last, where the slaves worked under his superintendance. That after work the slaves proceeded home, on which occasion, when they got near the stable, one of them, named Solon from Mozambique, reported to the defendant in person that the deceased slave Cornelius was thirsty and faint, and that he had staggered and fallen down on his way home. That the defendant in person being displeased thereat, said that it was all pretence, and thereupon, because Cornelius could not speak and answer plainly, flogged him with a stick, and on which occasion he was held fast by two of the slaves, named Manuel and Solon. That the defendant in person then gave orders that Cornelius should be again punished, for which purpose he was brought to a certain little room, where being entirely stripped and held fast by the slaves Arend, Oranje, Adrian, and Solon, he, on the orders of the defendant in person,

was flogged on his posteriors with the trace of a horse waggon, and received many stripes. That after this second punishment the defendant in person had Cornelius confined in irons (which crime the defendant repeatedly acknowledged on his trial), with his hands crosswise and made fast to his feet, with orders to Solon not to give Cornelius any victuals, and that unless he begged forgiveness and spoke plainer, he should not release him; but which Solon however did, and gave him something to eat, after he had remained in the aforesaid position till the evening after supper.

That the next day, being the 5th September last, all the people, among whom the deceased Cornelius was, repaired to their work at the land, where the defendant in person also was; on which occasion he, seeing that Cornelius worked but little, saying that his body was very sore and that he was too weak, the defendant in person again beat him, first with a few strokes of a stick, and then had him held fast, in which position the defendant in person further flogged him, and thereupon ordered him to go and collect the bushes together that were to be burned. That said Cornelius still not working to the satisfaction of the defendant in person, the latter again gave him some strokes of his stick, one of which hit Cornelius on the head, which began to bleed, and to which tobacco spittle was applied, whereupon Cornelius remained lying down by the bushes, chiefly through weakness. That after all this had taken place, the father of the defendant in person came to the land, and shortly afterwards one of the maids, named Styn, with the people's dinners, when the defendant's father having asked the cause of Cornelius's head bleeding, the defendant in person answered "I have flogged him, and must have hit him on the head," upon which the father of the defendant in person gave such orders that the poor ill treated Cornelius was at last released from the hands of his persecutor, by desiring him to go home, which he accordingly did with the abovementioned Styn. That however the persecuting spirit of the defendant in person not having yet subsided, he found good again to beat Cornelius with his stick, because he did not walk as he wished. That Cornelius having got as far as the burying ground there fell, crying out "I can hold it no longer," which the defendant in person, who in the meantime had come up,

answered by saying it was nothing but affectation, and wherefore he again gave Cornelius some strokes of the stick. That the mother of the defendant having at that moment come from the dwelling house, she also became concerned for Cornelius, who thereupon grew very ill, on which when he was almost dying the rings that he had on his legs (which however had been put on with the consent of the magistrate) were struck off, an operation very painful for a healthy person, and which therefore must have occasioned no little agony to Cornelius in the last hours of his life, who died on the morning of the 6th, and was buried the same evening, without the consent of the Fieldcornet, contrary to the 236th article of the instructions for the government of the Country Districts; all of which treatment, as Cornelius was flogged and (N.B. without having done any the least harm) seven times within the twenty-four hours, must most certainly have hastened his death; while the only thing which has appeared to the R.O. Prosecutor from the investigation, in excuse of the defendant in person, is that Cornelius was a bad slave, and as a proof of which he wore iron rings to nearly the period of his painful death. For all of which reasons the R.O. Prosecutor makes the following claim and conclusion against Jan Jacobus de Villiers, the defendant in person in this case: namely that the defendant in person shall be declared by sentence of your Worships guilty of gross ill treatment of the deceased slave Cornelius, which if it were not the occasion of his death, at least considerably hastened it, and therefore condemned to be immediately taken into custody, in order to be transported to New South Wales for life, and to be sent from the prison here to Robben Island till an opportunity offers for his transportation, with the costs, or to such other pains and penalties as your Worships in your wise judgement may think meet. And finally that Solomon the complainant shall be judicially sold for account of his master, under condition of never again coming under the dominion of his master or any of his relations; all with reserve of action to the R.O. Prosecutor against Paul de Villiers, formerly Fieldcornet, for his having caused the deceased slave Cornelius to be buried without the consent of the Fieldcornet of the District, contrary to Art. 236 of the Instructions for the government of the Country Districts.

The defendant in person requests an investigation of the claim, and that pity may be taken on him as a youth, and further says in his defence :

On Wednesday evening the 4th of September last hearing a cry of the children who were about the house, they told me it was Solon calling out to Cornelius to come along ; on which I sent one of the children to Cornelius to say that he must immediately come to me. When he came opposite to the stable, I gave him three strokes of a trace, which I found there, and ordered Solon to bring him to the slave house, where I had him held fast by four of the slaves, because he would not work that day, and having caused his trousers to be pulled down I gave him at the utmost ten strokes with the same trace. I then ordered the slaves to go and fetch their suppers from the house, and to let Cornelius remain in the slave house, on which Solomon observed to me that Cornelius would run away. Seeing the irons which the runaway slave Goliath had on when he was brought home laying there, and being afraid that Cornelius would run away, I ordered Solomon to put him in the irons so long till the slaves should come back with their suppers, and having then returned to the stable I saw that Cornelius was out of his irons and was sitting by the fire to warm himself, on which I desired that the necessary victuals should be given him. The morning after, which was Thursday the 5th, I went to the land about eight o'clock, when seeing that Cornelius would not work, I gave him a couple of strokes on the back with a thin switch, and not with a stick as the slaves have declared, and making a third stroke at him, he thrust his head forwards, through which I accidentally hit him there, which merely caused a little blood on his hair, and which when I saw I desired Adrian to wipe off. Cornelius then continued his work with the other people, and shortly after my father came to the land, when asking Cornelius how he came so behind the other people in his work, Cornelius answered "Master I am sick," from which I must suppose he had a presentiment that he was poisoned. My father then asked Cornelius what blood that was on his hair, to which I answered "I have flogged him, and accidentally hit him with a switch on the head," on which my father turned round to set the people digging, and at the same time ordered Cornelius to

collect the bushes together, which he being about to do, accidentally fell over one of the loose bushes, on which I desired the other slaves to lift him up; he then separated from the other people and went and sat down. My father having given directions how the people were to dig the land, ordered Cornelius to go home, on which occasion he told my father that Adrian had promised him wine if he pretended to be sick. When my father and I were going to the house, we met Styn coming to the land with the people's dinners, on which my father desired her to bring Cornelius with her when she returned. While I sat with my father and mother at dinner, Styn sent word by a little boy that Cornelius would not walk, and that he had lain down to sleep between the house and the burying ground, in consequence of which my mother and I went there, when saying that he had slept a little my mother asked "Cornelius what is the matter with you?" to which he answered twice "Mistress I am poisoned." My mother then asked him who poisoned him, to which he replied "Oranje has poisoned me." He was then led home under the arm by Styn, when my mother gave him some strong tea to drink, supposing he was drunk. My father ordered the slaves Oranje and Manuel to dig the grave deep, but they only sewed up the body, and without making the grave deep or taking the stones out of it, they and the other slaves buried him without a single Christian being present, and without properly covering the grave with stones.

After the funeral they came home equally pleasant and merry, on which I said to my mother, one could not suppose anything else than that they came from a wedding. The same morning that Solomon ran away, the slaves without the knowledge of my father went back to the grave in order to cover it properly. A considerable time ago, going into the vineyard where Cornelius was at work alone, he informed me that Oranje having once said to him "you and Flux are rogues," Cornelius had asked him "how so?" to which Oranje answered "because you inform Master Jan of everything, whom I shall one day or other frighten, and I shall find you and Flux." On that I asked Cornelius "what can Oranje do to you?" to which he replied "he will poison me, I trust him but half."

Landdrost and Heemraden having heard the claim of the

R. O. Prosecutor, and taken everything into consideration which deserved attention or could move the Court, administering Justice in the name and on behalf of His Britannic Majesty, declares the defendant in person Jan Jacobus de Villiers guilty of gross ill treatment of the deceased Cornelius, late a slave of his father, and therefore condemns him to be banished out of this Colony and the dependencies thereof for the term of fifteen years, on pain of more severe punishment should he return within that period, and to be confined at Robben Island or elsewhere till a favorable opportunity offers for his being sent away. Further declares that the slave Solomon belonging to Paul de Villiers shall be judicially sold for his account, with this understanding never to return under the dominion of his Master or any of his relations. With condemnation of the defendant in person in all the costs and expences of this prosecution, and rejection of the further claim; and reserve to the R. O. Prosecutor to take such steps as he may deem advisable against the above-mentioned Paul de Villiers for causing his late slave Cornelius to be buried without having previously obtained the necessary consent.

Thus done, decreed, and pronounced at a Criminal Court held by the Landdrost and Heemraden of Stellenbosch, day and year as above.

(Signed) D. J. VAN RYNEVELD, Landdrost,
J. C. FAURE,
AREND BRINK,
C. J. BRIERS,
W. WIUM.

In my presence.

(Signed) J. G. G. LINDENBERG.

Previously to the Court being closed, the defendant in person declared himself aggrieved by the above sentence, and therefore to lodge an appeal against the same to the Worshipful the Court of Justice of this Government.

Quod Attestor.

(Signed) J. G. G. LINDENBERG.

Advocate M. A. Smuts hereupon says for claim in Appeal :—

Worshipful Gentlemen,—Have I ever felt the value and the dignity of the profession which I have the honor to exercise, then certainly it is at this moment when I have an opportunity of stepping forward to defend before this Worshipful Court an unfortunate youth, who has anxiously waited for this day in order to clear himself to the world of the hateful crime with which he has been accused ; for however clear a man's conscience may be, it can never be a matter of indifference to him who sets a price on his honor and good name, what idea his fellow creatures entertain of him, and especially not, when like the Appellant in this case, he has not sprung from the dregs of the people, but who from a good and liberal education can be set forward in that career which is adapted to secure him the esteem and attachment of his fellow citizens.

The case which at present constitutes the object of your Worships' investigation and decision had from its commencement shocked every individual who had feeling and love for his native Country, because it was painted in the blackest and most hateful colours, so that every well thinking inhabitant feared the result, and in such a light it was first brought before this Worshipful Court. But no sooner was the preliminary investigation forwarded to your Worships than appearances became so totally changed that the case was referred back for prosecution to the Board of Landdrost and Heemraden of Stellenbosch by resolution of this Court ; from so equitable and well founded a resolution one could not have expected anything else than a favorable termination, the same as in former similar cases, such as in that of Niekerk and others, namely a fine, had the appellant been guilty, the contrary of which however we shall prove. How surprized then must we not have been to hear a claim made for transportation to New South Wales, a claim which was sufficient, did there not exist any other reason of grievance, to annul the whole of the sentence. Let us only refer to the 2nd Article of the Crown Trial, where we find the following : “ All crimes and misdemeanours committed in any of the Districts, which are not subject to a more severe punishment than that of public scourging, banishment, or confinement for a limited period, shall be brought before the Board of Landdrost and Heemraden of the District in which

the crime has been committed." Hence we plainly see that the will of the Legislator was to acknowledge to the respective Boards of Landdrost and Heemraden, only the power of *temporary banishment* and *transportation*, and this being the case, it is indisputable that the R. O. respondent had not any right to make such a claim, or the Court to give the sentence on such a claim, which is now appealed from. For certainly the power and authority to decide on the lot of a fellow creature is of such a great and fearful nature that it is not without reason that the competency of a Judge in such cases has been frequently a question of the greatest importance, and which is a question that must be treated with the greatest caution, because it is the competency or the incompetency of the Court which distinguishes a legal from an illegal judgement.

We have deemed it necessary to submit these remarks to this Worshipful Court, although we have many other grounds on which we confidently trust to be able to prove the innocence of the Appellant, and in order the better to attain this our object, we shall previously give a faithful recital not only of what took place on the occasion of the first punishment, but also of what preceded it. The latter, namely what happened prior to the first punishment, we must above all not omit, and it were to be wished that the Landdrost and Heemraden had given themselves the trouble to have enquired into it, because it must be considered as the primary cause of that punishment, and which circumstance the defendant in person, now Appellant, did not learn till on his trial.

On Wednesday, the 4th of September, after that the deceased Cornelius had worked lazily the whole of the day, says Solon (one of the witnesses for the prosecution) Cornelius, although it was cold, went and drank water at a ditch, and that shortly afterwards he staggered in his walk and fell. Of that circumstance the Appellant knew nothing whatever, for he was at that moment employed in putting the horses in the stable, where the Appellant, hearing some person crying out, and asking who it was, and where it came from, was answered by the children about the house, that it was Solon calling out to Cornelius to walk on; whereupon the Appellant sent one of the children to Cornelius to desire him to come speedily to the Appellant, who did not, nor could not know what prevented

his walking quickly, but on the contrary supposed that Cornelius had as usual an inclination to run away for a few days from his work, in which he was always lazy and unwilling. This we find in all the depositions, both pro and con ; also in the answers of Adrian on the 8th interrogatory, and in the answers of Oranje to the 2nd and 3rd questions of his cross examination. Cornelius coming within the reach of the Appellant, the latter gave him three strokes with a trace, which he just found there ; and at the same time directed Solon to take him to the slave house, where the Appellant, because Cornelius would not work that day, caused him to be held fast by four of the slaves, and after pulling down his trousers gave him at the utmost ten strokes of the same trace on his posteriors, upon which he ordered Solon to go and fetch his supper from the dwelling house and to let Cornelius remain so long where he was ; to which Solon having answered (a proof how well founded the suspicion of the Appellant was that Cornelius wanted to desert) “ Master he will run away.” This observation, with the Appellant’s own supposition, and at the same time seeing the irons laying there in which a runaway slave named Goliath had been brought home, induced the idea to the Appellant of confining Cornelius so long in these irons till the other people had done their suppers and returned to the slave house. The Appellant having then gone back to the stable, saw that Cornelius had been released out of the irons and that he sat by the fire to warm himself (vide the cross examination of Oranje), on which he ordered the necessary victuals to be given him, and herewith ended the business of that day, which we confidently trust no person will stamp with the name of mal-treatment.

The next morning, Thursday the 5th, the Appellant coming to the land where the people were at work, about 8 o’clock, immediately perceived that the late Cornelius, who did not complain of anything but who as usual was slow and lazy, would not work, and therefore deemed it necessary seriously to warn him thereto ; on which the Appellant gave him a couple of strokes over the back with a thin switch, and not with a stick (vide the answer of Solomon to the 13th interrogatory, Adrian’s answer to the 6th, and that of Oranje to the 19th interrogatory), and being about to give him a third stroke

on the same place, he, by accident and without any intention, hit him on the head, which occasioned a small wound, (vide Solon's answer to the 8th interrogatory of the Court, and Oranje's answer to the 9th interrogatory). The Appellant on seeing this unintentional wound, by a small quantity of blood which he perceived on his hair, ordered Adrian to wipe it off, after which Cornelius went to his work with the other people without complaining of anything; the Appellant having then as well as always allowed Cornelius to work less than the other people, vide Oranje's answer to the 26th interrogatory.

Shortly after this, the Appellant's father came to the land to see how the work was getting on, and perceiving Cornelius's unwillingness asked him what was the reason of his lagging behind so, to which he having answered "Master I am sick," and the Appellant's father at the same time seeing the blood, which seems not to have been properly wiped off, enquired the reason of it from the Appellant; who thereupon informed him of the circumstance.

The Appellant's father having then gone to the place where the other people were at work, ordered Cornelius to go and gather bushes, which he being employed in doing fell over some of the loose bushes that lay scattered about, whereupon the Appellant directed the other people to lift him up, which being done, Cornelius then left off work and sat down by the bushes, (vide the answer of Adrian to the 7th interrogatory) till that the Appellant's father having given the necessary orders and directions about the work that was to be done, took Cornelius home with him (vide the deposition of Oranje), on the way whither Cornelius told the Appellant's father that Adrian had promised him wine in case he pretended to be sick.

That Cornelius not being able to walk fast remained behind, while the Appellant and his father proceeded homewards, having ordered Styn, one of the maids who was to take the people's dinners to the land, to bring Cornelius home with her, so that the Appellant did not know better than that Cornelius was in the slave house when Styn came, while they were at dinner, and reported that Cornelius would not walk, and that he had lain down between the dwelling house and the burying ground, and had there gone to sleep.

That Appellant and his mother having thereupon proceeded

to the place where Cornelius lay, was informed by him that he had slept a little, when being asked by Appellant's mother if anything was the matter with him, he answered two different times " Mistress I am poisoned," and on the further question of who had done so, replied " Oranje has poisoned me," upon which Cornelius was carried home, and some strong tea given him to drink by the Appellant's mother, in the supposition that he was actually intoxicated. But Cornelius still remaining in the same state, all possible care was taken of him, and every attention paid to restore him to health ; he was even put into a warm bath that evening (vide the deposition of Oranje). The next morning Cornelius not being better, but on the contrary worse, the Appellant's father (certainly no proof of the cruel manner in which Cornelius is said to have been treated) immediately sent for a doctor in order that no means might be left untried to preserve his life (vide Adrian's answer to the 9th interrogatory, and especially the professional certificate of Doctor Shand), but all this trouble and care was fruitless, for Cornelius died on Friday morning of an inflammation of the brain, which one has so much endeavoured, but fruitlessly, to attribute to the flogging given him by the Appellant.

Having now laid before the Court a true relation of the real circumstances of the case, upon which the sentence in question is founded, or at least built, we shall now proceed to state our reasons of grievance against the same, and in order to proceed herein with regularity we shall in the first place shew,

That there has been no mal-treatment, and therefore that the floggings which Cornelius received could not have even led to the cause of his death, and still less to death itself. Let us for this purpose compare the grounds of the R.O. Prosecutor's claim with the *visum repertum* of Doctor Shand, who assisted at the inquest held on the body of Cornelius, and we shall then speedily discover that both the R.O. Respondent in his claim and the Court in its sentence have erred, but errors are human.

The first grounds of the R.O. Respondent's accusation is " that on Wednesday the 4th September last the Appellant being at his father's place, where the slaves were at work under his superintendance, and after work going home, one of them, named Solon, on that occasion reported to the Appellant in the neighbourhood of the stable that the slave Cornelius

was thirsty and faint, and that he had staggered and fallen down on the way home. That Appellant being dissatisfied thereat, said that it was all affectation of Cornelius, and thereupon, because he could not speak and answer distinctly, flogged him with a quince stick, on which occasion he was held fast by Manuel and Solon, after which the Appellant gave orders that Cornelius should be again punished, for which purpose having been brought to a certain outdoor apartment, and there entirely stripped and held fast by the slaves Arend, Oranje, Adrian, and Solon, he was thereupon by the Appellant's orders flogged with a trace and received many stripes. That after this second punishment the Appellant put him in irons with his hands crosswise made fast to his feet, and at the same time gave orders to Solon that Cornelius should not have any victuals, but that if he begged forgiveness and spoke better, he should then be released from the irons, which said Solon, however, did without his having prayed for forgiveness and gave him something to eat, after Cornelius had remained in that position till supper was over, and which said Solon appears to have done of his own accord and out of pity for his comrade.

We now ask this Worshipful Court, where is a crime here to be found? Or is it a crime when a Master corrects his slave who does not do his duty and is too lazy to work? If so, what is to become of the colonists? How are the farmers, who lay out enormous sums of money to procure hands, to go to work with their slaves? How can they, who have such a laborious and troublesome mode of livelihood, and who have to work with beings so different from other creatures, carry on their business, if a trifling and proper punishment is to subject them to a criminal Prosecution? No, your Worships! this cannot nor may not be, this would be carrying philanthropy too far. It is said that the punishment was inflicted with a stick, with a murderous instrument. But where do we find the smallest proof of this? Do not all the slaves unanimously declare that the first punishment by the stable and in the slave house was with a trace? Let us read the whole of the records through, and we shall not find anything of the kind. The third punishment, or that on Thursday, was not even with a stick, notwithstanding it is so strongly endeavoured to make it appear so.

See only the depositions of Solomon, Solon, Oranje, Adrian, and others, and they all say a *quince stick* or cudgel of about a finger thick, *without a knob*. Now whether we can stamp a thin switch with the name of a cudgel, we leave it to the enlightened judgment of the Court.

There does not exist the smallest doubt but what the late Cornelius deserved the first correction. This sufficiently appears from the answers of Adrian, Oranje, Solon, Manuel, and Flux; all the witnesses say, as out of one mouth, that Cornelius on that occasion (namely on the Wednesday) received but a trifling flogging. And we ask whether the Appellant had not double reason to punish the late Cornelius that day for his laziness and unwillingness to work? Do not all his fellow slaves declare that he was in the habit of running away continually, and that he was always slow and lazy in his work? And how could the Appellant attribute his slowness in going to the house and his endeavour to remain behind to anything else than to an intention to run away? For your Worships will please to keep in view that the Appellant then knew nothing whatever of Cornelius having gone and drunk cold water after his work. And as a further proof: when the Appellant asked Cornelius the reason of his staying so behind, he did not think proper to give an answer. Was not this reason enough to flog him, and punish such hateful obstinacy? How unfortunate would it not be for Masters if their slaves could suffice, when they have not done their duty, with being silent and not giving an answer to the questions of their legal master? What would be the consequence? What would then become of the unfortunate farmer and of this Colony already so far behindhand? No, your Worships! that punishment can never have given grounds for the sentence in question, we have too well cleared up that point, and we shall therefore now proceed to another part of the accusation, namely the putting of Cornelius in irons the same day after the punishment.

With great impression has the R.O. Respondent endeavoured to weave in this point into his accusation, in order thereby to give an appearance of cruelty on the one hand and on the other to shew the illegality of such an act. But in this he has also greatly erred. Had the R.O. Respondent attentively

read over the preparatory informations and the further depositions and examinations, and more accurately perused the different ordinances on this head, he had soon discovered his error, and not have urged this point further. For it is certainly proved in the documents of the trial, now laying before your Worships, that the late Cornelius was but a few minutes in the irons, and that that confinement was alone with the intention to prevent Cornelius running away as usual while the other people were at their suppers, and therefore merely till such time as one of them could return to keep watch over Cornelius, so that the accusation must alone consist in not having obtained the consent of the magistrate. But how does not the R.O. Respondent err herein, for he has not been able either from the instructions for the government of the Country Districts or from any other law ever promulgated in this Colony, to prove that the consent or even the previous knowledge of the Magistrate is necessary for a Master to put his slave in irons for good reasons. On the contrary we find in the 12th article of the Statutes of India, title Slaves, enacted on the grounds of the resolution of the Supreme Government of India dated 15th January 1682, the following :—

“ When a Master is obliged for important reasons to prevent a threatened evil, to confine his slave in irons in order to secure him, he shall give information thereof to the competent officer within twenty-four hours.” And really an application for permission or giving of previous information before one could secure a suspected person or put him in irons would be absurdity itself, because that the threatened evil or the desertion of the slave would have already taken place before such permission could be obtained or information given, and specially when the residence of the person wanting so to do be situated far from the seat of Magistracy. This we trust will be sufficient on this point, for we have proved as clear as day that the R.O. Respondent has not scrupled to bring into his charges as a crime an act authorised by the laws of the colony.

Another point of accusation is this, that the Appellant struck Cornelius on the head ; this circumstance has also been represented in an aggravated light, for the R.O. Respondent has endeavoured to prove that the death of Cornelius, if not occasioned, was at least hastened thereby ; this however will

cost us but little trouble to refute. Where is there a shadow of proof on which to ground such an argument? Where are we to look for a proof? If it be to be found in any of the documents, then it must be in the professional certificate of the Doctor or in the act of Inquest; but we find nothing of the kind in either. We only read there that a wound was found on the head of the deceased of about half an inch long, penetrating to the bone, and therefore scarcely a quarter of an inch deep. Is it not then absurd to ascribe to such a superficial wound the death of Cornelius? On what then does the R.O. Respondent found his charge that if the death of Cornelius was not occasioned by the wound, it was at least hastened by it? Such an assertion cannot be founded on anything else than on the opinion of the surgeon, namely that if the wound had not been inflicted the late Cornelius, who laboured under an inflammation of the brain, could have perhaps lived three or four days longer. Besides every one knows the duty of a public accuser: namely that it is his business, when a case is uncertain or doubtful, to take it up in the most favourable light for the accused. He ought to act the part of the bee, but not of the spider, he ought to know that a judge always wishes to follow the golden rule, namely that it is better ten guilty should escape than one innocent person suffer. The surgeon surely does not say that in case the wound had not been inflicted on the head of the late Cornelius, (who laboured under a fatal disease), he *certainly* would have lived three or four days longer. On the contrary he plainly says that *perhaps* he *could* have lived three or four days more. The late Cornelius actually did live a day longer, and this proves that the fatality of the disorder was already farther advanced than the surgeon was aware of at the time the Inquest was held; and all doubts in this respect are completely removed by the indisputable proof that the wound was trifling and superficial; the *visum repertum* is entitled to every belief, because it is an axiom in law "quod cuique in suâ arte sit credendum." All those requisites have been observed, and therefore there is nothing to cavil on the subject.

But now, supposing for a moment that the wound on the head had hastened the death of the late Cornelius, and that he could have lived three or four days longer had he not received

it, the question would in fact then be, did the appellant inflict the wound intentionally? Of such an intention nothing appears; on the contrary Manuel, one of the witnesses for the prosecution, says he stooped down to take up the bushes, by which he received the blow on his head, and what could be more natural than when one aims a blow at the back and the person struck at stoops, than that the striker should hit the head instead of the back? It does not anywhere appear that the Appellant intended to strike Cornelius on the head. It was against his own interest, as well as against that of his father, to do so; and however young and inexperienced the appellant may be, he knew very well that he must be responsible and punishable for such an illegal act.

To this is not opposed the instrument with which the blow was inflicted, for Solon says in one of his answers it was not with a stick, but with a switch as thick as his finger, and all the other witnesses, although they call it a stick, specially say without a knob, which latter is the circumstance that in this Country gives the name of a stick or cudgel; on the contrary it was nothing more than a thin switch of the quince tree, very different from a stick or cudgel; we mean a real cudgel, for a slave frequently gives this name to a walking stick whether it be thick or thin. The wound was therefore accidental, and cannot be considered anything else than a casual wound, which was besides but superficial.

What now is an accidental Homicide? *Van der Linden says in his law Manual page 241-7* "that an accidental homicide is understood to be that which has not been caused either with the intention or through the imprudence of the doer, and through which the death of another is occasioned by mere accident contrary to all intention."

When all these circumstances combine, such an act is not subject to any responsibility. We again ask, where is there a proof of any such intention? Do not even many of the witnesses for the prosecution say that the Appellant caused the late Cornelius to work less than the other people? This then being the case, how could one have entertained the idea that the same person, who allowed Cornelius to work less than the other people, would intentionally inflict such a wound on him as to cause or hasten his death? No, your Worships!

reason and nature smother our voice. We feel, and we know, that the Appellant is not capable of so doing.

We cannot however refuse to the Members of the Court below all possible praise for the trouble they have taken in examining the witnesses respecting the nature of the instruments with which the punishments were inflicted and the accidental wound in the head occasioned, because they thereby amplified and made good a deficiency of proof in the Appellant's favor, as well as the neglect of the R.O. Respondent in not exhibiting these instruments in the Court below ; but which neglect the R.O. Respondent most probably would not have been guilty of in case they had been illegal instruments. It is however sufficient that it has appeared from the investigation, namely from the evidence of the slaves of the appellant's father, that the instruments consisted of a piece of the trace of a horse waggon of the thickness of one's little finger and about two or three fingers in breadth, and of a switch or so-called quince stick, which was about an inch thick at the upper end and tapering downwards. But had now the witnesses positively declared that this quince switch was actually a cudgel, even then the wishes of the R.O. Respondent would not be answered; on the contrary the evidences must then be punished for bearing false witness, because the act of inquest and the surgical certificate make mention of a small wound less than half an inch in length and only penetrating to the skin, without fracture or depression of the skull, and this indisputably proves that the instrument was a legal one. Besides we are to recollect that the Court may only admit the evidence of slaves as truth in so far as it coincides with the *corpus delicti*, while a deviation in their evidence invalidates it, as not being sworn to.

If therefore it be true what the Landdrost and Heemraden say in their report that the punishment did not deserve a name, and that the surgical certificate says that the blow neither caused nor contributed to the death of Cornelius, then certainly the claim and the sentence founded thereon must be annulled, and which argument is supported by the divine law from the mouth of Moses himself at a time when slaves were not so numerous, namely in the 20th Chapter of Exodus, 20th and 21st verses, where we find the following : " If a man smite his servant or his maid with a rod, and he die under his hand, he

shall be surely punished. Notwithstanding if he continue a day or two, he shall not be punished, for he is his money." If this now be the law, when death has been the unavoidable consequence of the blow, on what ground then, or with what reason, can a trifling correction be punished; for surely no person ought to be put to any trouble for having done a legal act. The witnesses say that the Appellant gave the late Cornelius from twenty to thirty strokes with the trace, which being a pliable instrument can in effect be considered the same as ten or fifteen strokes of a rope such as is used on board of ships and in the prisons of this Colony. The number of strokes given to Cornelius the second day, namely Thursday the 5th September, with the so-called quince stick, notwithstanding all endeavours for the purpose, could not be prescribed; while the act of inquest and the surgical certificate, documents which we repeat are indisputable, prove that the marks of only a trivial punishment were discoverable; it therefore speaks for itself that the number of strokes given the second day with the quince stick must have been very trifling.

Lastly, there is now but one point left for the Appellant's advocate to refute, which he is sorry to find the R.O. Respondent has woven into the other frivolous charges, namely that the Appellant in order to torture the late Cornelius in his last moments, caused the iron rings which he had on his legs to be knocked off. It is with disdain we see this charge, because it is entirely fabricated and entirely false, for not even one of the witnesses has so far forgotten himself as to say that the Appellant caused the rings of the late Cornelius, whether in his last moments or earlier, to be knocked off in order to torture him; besides that it plainly appears from the whole of the proceedings carried on in the first instance that for at least fourteen days before Cornelius died he had had only one ring on one leg. For Oranje, on being questioned respecting the time that the rings were knocked off, says "one of them we knocked off before and the other was taken off the same Thursday he was brought home from the land," and when asked why was the ring knocked off, he answered "to ease his foot, for his foot" (he naturally means his leg) "was raw where the ring had been." Whence it evidently appears that it was an act of humanity and not of cruelty, and the more so

because the late Cornelius had had the rings on his legs with the authority and by order of the Magistrate.

Hitherto the Advocate for the Appellant has employed himself to refute the different points of the accusation, and to prove the groundlessness, as well of the claim as of the sentence which follows. We shall now request the liberty to do that which, although not bound to do, we have deemed advisable for the better information of the Court, namely to shew from the surgical certificate, elucidated by the witnesses and by the answers of the Doctor himself, that the late Cornelius could not have lived an hour longer had he not received a blow or a touch from the Appellant, or any one else, but that the disorder under which he laboured was the sole and undoubted cause of his death, and that it was not hastened by the act of any human being. We allude to that part of the certificate in which the surgeon certifies what he saw, but not that in which he gives his opinion; for we wish to enable your Worships to form your own opinions; this a Court is not only authorised, but obliged to do, for it concerns the Judge's own conscience, and not the surgeon or any one else. But we must previously remind the Court that the surgeon's opinion is "that the slave in question owed his death to inflammation of the brain, which had been imperceptibly supervening a day or two before, and aggravated or suddenly brought into more violent action from the infliction of the blow, or the subsequent treatment he had experienced." And the surgeon, on being asked "If the boy Cornelius had not received the blow what length of time do you suppose he might have lived?" answers "From the period the disease supervened, he might have lived perhaps three or four days, conceiving from the appearance discovered on dissection that it had been a peculiarly violent attack of the disease in question." What now does the surgeon certify to have found? He says "on removing the integuments of the head, a very considerable portion of coagulated lymph was effused over the upper part of the head, mixed with spots of coagulated and fluid blood, but these were not confined to the immediate neighbourhood of the wound." The advocate for the Appellant takes the liberty to remark hereon, all that coagulated lymph could not have been collected in twenty-four hours, and consequently could not have been occasioned by

the wound, but on the contrary must have existed previously thereto ; for it is notorious in the proceedings that the late Cornelius died within twenty-four hours after he received the wound. Add now to this the answer of the surgeon "that from the time the disease commenced, but not from the time the wound was inflicted, Cornelius might have lived perhaps three or four days," and then we shall see that the disease may have existed three or four days before he received the blow. The surgeon further certifies "that in consequence of the very strong adhesion of the skull to the dura mater membrane it was with difficulty and resistance he could raise the skull cap, small portions of the dura mater having been torn in accomplishing it." On this we observe that the dura mater could not have grown so fast to the skull in three or four days, without there was a previous cause to occasion it. The surgeon then says "that the dura mater membrane was slightly inflamed, and that the pia mater membrane was in a high state of inflammation." We likewise remark hereon that it is certain in physic that the dura mater, which was only slightly inflamed, could not have inflamed the pia mater in such a high degree, whence it follows that as the dura mater lays on the pia mater, the lowermost and much inflamed membrane must have infected the uppermost and less inflamed dura mater membrane, and consequently the inflammation must have commenced internally and not externally ; while the external and even superficial wound could not have had the smallest connection with the internal inflammation in the head, which was the cause of death. From what we have now advanced, the Court must certainly be convinced of the innocence of the Appellant, and notwithstanding one wants to banish this youth. But no, your Worships, such a sentence can neither now, nor ever exist. We have not only here to defend the Appellant's cause, but the interests of the whole Colony. It concerns every individual, and especially those in the interior of this scantily peopled Colony. It concerns the honor of impartial justice and the inviolable Majesty of this Government. What, your Worships, would be the consequence if an only and beloved child, brought up by his parents with care and tenderness, were to be banished for inflicting trivial punishment for fifteen years from the bosom of his family and relations,

from the Country where he first saw the light, where his cradle stood, and where he hopes to descend to the grave ? No, this may not, this cannot be. Divine and human laws forbid it. In the fullest confidence therefore that the Court is convinced of the Appellant's innocence, we have no hesitation to make the following claim and conclusion :

For which, and other reasons and arguments hereafter to be alleged, if necessary, the advocate for the Appellant making claim concludes that the sentence of the Board of Landdrost and Heemraden of Stellenbosch, dated the 18th December 1822, be annulled or corrected, and that the Appellant shall be declared by sentence of this Worshipful Court pure, clean, and innocent of the crimes laid to his charge ; with condemnation of the R.O. Respondent in the costs, as well of the proceedings in the Court below (with the exception of those incurred by the Inquest and preparatory informations) as in this Appeal, or otherwise do Justice as your Worships in your wisdom may deem meet.

Advocate A. Faure for the R.O. Respondent, says :—
Worshipful Gentlemen !

Convinced that your Worships feel with me the necessity of the most severe punishments for the maintenance of the safety of society, when attacked, so as to give that impression to, and respect for the laws, without which the bulwark of our liberties would be fruitless ; convinced that the rights of mankind, the defence of which nature so strongly recommends to us, should be guarded by the laws from the reach of the wilful and the presumptuous, and that no means can be considered too severe to restrain, as far as lies in our power, the rashness and the wantonness of evil doers ; I now with all humility take upon me the task of defending the sentence of the board of Landdrost and Heemraden of Stellenbosch, dated the 18th December last, whereby the Appellant has been condemned to fifteen years banishment out of this Colony, in the discharge of which important duty I trust to the indulgence of this Worshipful Court. How disagreeable soever it may be, I undertake it the more readily because that it again relates to the ill treatment of a slave, one of those acts which alas ! we too frequently see committed, and which must awaken in other

nations an aversion towards the good inhabitants of this Settlement, and especially when not one, but repeated cases of a similar nature have been brought before this Court for trial and punishment, one of which has lately had a melancholy termination, that is still fresh in the memory of every one. May therefore the result of this day prove a lesson to all how they should treat their slaves, who are their fellow creatures, and a warning to them not to proceed to cruelty when they may deem it necessary to punish. This is most undoubtedly the wish of your Worships and of every well thinking and humane citizen.

It will not be necessary to give a circumstantial detail of everything which took place between the Appellant and the late Cornelius ; that abundantly appears from the Proceedings carried on, and from the claims made in the Court below ; we shall only quote the principal features of this unfortunate history, and then fix our thoughts on the visum repertum of Doctor Shand, the District's Surgeon, in order by our elucidation of, and remarks on these two points, to shew that the Appellant cannot be considered aggrieved by the sentence of the Court below.

Without any previous offence, or even the shadow of an offence, and therefore without any cause, but merely on a message from the slave Solon, (on Wednesday evening the 4th September last) that the late Cornelius, who had an iron ring on one of his legs to which a chain was riveted, was not well and staggered as he walked, and on the supposition that it was all pretence for the purpose (as the Appellant's advocate says) of obtaining an opportunity to run away, the suffering Cornelius received from the Appellant some strokes of a stick, and shortly afterwards a second punishment on his naked body with a trace of a horse waggon about half an inch thick and two or three fingers in breadth, being held fast by four of the slaves named Adrian, Solon, Oranje, and Arend. After that punishment Cornelius was the same evening, by the orders of the Appellant, put in irons with his hands crosswise over his legs, and therefore in a crooked position, with directions to the slave Solon not to give Cornelius any victuals till he begged forgiveness, but this cruel order was not obeyed ; the comrade of Cornelius, Solon, released him on his complaining that he

was cold, brought him to the fire to warm himself, gave him his supper, and thereupon allowed him to go to sleep.

The next day, Thursday the 5th September, the Appellant conceived he again discovered a certain slowness in Cornelius. The complaints of pain throughout the whole of the chastised body and of his inability to work with the same speed as his comrades, found no admission, no consideration, still less pity or humanity, but a very different sensation in the hardened mind of the Appellant, for on the bare supposition that Cornelius shammed the Appellant had Cornelius held fast by two of the slaves and again gave him some strokes of the stick, which punishment a short time after Cornelius was let loose he renewed by striking at him while stooping down, the unfortunate consequence of which was that Cornelius got a blow on the head with the instrument made use of by the Appellant, through which he received a wound on the back part of the skull that began to bleed profusely, and which the Appellant endeavoured to stop by the application of tobacco spittle. In this situation, without help, and exposed to the heat of the sun, Cornelius remained till noon, when Appellant's father came to the land, whose attention was immediately attracted by the situation and bloody head of the wounded slave, but whose authority was not sufficient to guard Cornelius against further ill treatment; for it appears from the evidence of the maid Styn (who was ordered by her Master to wash Cornelius's head with wine and to lead him home) that she had got but a very little way with Cornelius when they were followed by the Appellant, who in cool blood, and notwithstanding that his father had placed the unfortunate Cornelius under his protection, did not scruple again to give the miserable object of his cruelty some strokes of his stick, through which continued punishment Cornelius, becoming weaker and weaker, could not reach the house, but fell down at some distance from the same, near the burying ground, crying out "*I cannot more.*"

The Appellant on receiving a message from Styn that he could not walk any further, went to the worn out Cornelius, and again beat him with the same stick he had so frequently used before, and dragged him on, till that Cornelius was at last released from the hands of his persecutor by the Appellant's mother. Wine, according to the mother's evidence, but which

the Appellant denominates *strong tea*, was immediately given to Cornelius, and other means also made use of for his recovery, but in vain, for the unfortunate wretch died the next morning, and that before the arrival of the too late sent for Doctor Shand.

We now ask your Worships, is this mal-treatment or not? What well thinking being, entertaining the smallest sentiment of humanity, could without any provocation, without any previous cause, proceed to such excesses? If the Appellant supposed that the late Cornelius shammed sickness, was it not his duty first to have enquired whether he really was ill, or not? And that supposition being found true, then, and not before was the time for punishment. Did the Appellant either on the Wednesday or on the Thursday make, or cause the least examination to be made, into the truth or falsity of what Cornelius complained of? No, your Worships! no such investigation took place; no remedy for the relief of his faintness or weakness was tried, but quite the contrary, for the use or abuse of a stick, or a waggon trace, and a confinement in irons in a crooked posture (this latter without even the previous knowledge of a Magistrate), or such a punishment as the Appellant on the first message from Solon inflicted on the slave Cornelius the Wednesday when he was so sick and could not walk without staggering, most certainly would never have been thought of by any person possessing the least humanity. Had the Appellant's father been made acquainted with the situation of Cornelius on Wednesday the 4th of September last, we have no doubt but he would have set bounds to the abused authority of his son, to preserve one of his fellow creatures entrusted to his care and compassion, from cruelty and ill usage, whereby the successively continued punishments and the wounding of Cornelius would have been prevented. It is said that it appears that Cornelius pretended to be sick on the Wednesday, as he went to work as usual the following day. It is true *he did go*, but is it proved that he worked? No, your Worships! the consonant evidence of the Appellant's father and of all the slaves testify that Cornelius could not even perform the easy work of gathering bushes, without lying down every now and then; therefore he could not work, and the mere suspicion which the Appellant cherished the day before of Cornelius caused him to repeat the ill treatment.

How ill did the Appellant comply with the manifest wish of his father, who wanted to release his wounded slave out of the cruel hands of his son, and who for that purpose ordered the maid Styn to take him home with her from the land ? Instead of letting Cornelius alone, he then follows him (see the deposition of Styn herself) and gives him three strokes more of his stick ; all of which punishments, including that at the burying ground, amounts to six times within eighteen hours. And now although, except the wound on the head all those repeated floggings left no marks of ill treatment, and although the number of the stripes does not appear, still however it is very evident that all together far exceeded the number of thirty nine, all of which were inflicted on different parts of an already worn out and exhausted body. When we now add to this, the knocking off the rings from the legs of Cornelius on the Thursday evening, when he was almost dying, an operation which a person in good health can scarcely bear, on account of the shock which it occasions throughout the whole frame, then, your Worships, no person will for a moment doubt but that the Appellant has been guilty of great excess in the punishment of the late Cornelius, and that he has thereby if not caused, at least considerably hastened his death.

We now come to the *visum repertum* of Doctor Shand, the District's Surgeon. No reference is made to that as if it was in the Appellant's favor. That certificate, together with his answer on his examination, contains indirectly this evidence, namely the *slave Cornelius was sick and the wound on his head hastened his death.* Vide Doctor Shand's subsequent examination by the Landdrost at the instance of His Majesty's Fiscal. When on the last question "*Is it your opinion that the death of the slave Cornelius is to be attributed to the blow he received on the 5th Instant ?*" he answers, "*Certainly not, I conceived that the concussion given to the brain by the infliction of the blow may have aggravated the disease already existing there, and thereby accelerated its fatal termination.*"

With due submission to your Worships' more enlightened judgment, we cannot omit observing that, in our humble opinion, Doctor Shand has declared more than he as a human being could do. How can we reconcile it with sound reason ? How is it possible that Doctor Shand, who had never seen the

late Cornelius before, and only at the Inquest held on the 8th September, a period of nearly four days after he received the blow, when Cornelius had remained in that situation for hours under a hot sun without any other assistance than a little tobacco spittle applied on or in the wound, afterwards wine given to him by an unskilful person, and then the rings knocked off his legs at a moment that he was in the greatest danger ; how, we say, is it possible that Doctor Shand can declare that Cornelius laboured under an inflammation of the brain *before* the blow which he received on Thursday the 5th September, and that it increased after the blow ? *Vide* his answer to the 5th interrogatory put to him by the Board of Landdrost and Heemraden of Stellenbosch, where he says “ *the disease being farther advanced at the period of the blow,*” —or according to the words of his professional Certificate “ *imperceptibly intervening a day or two before.*” How is this further possible when he examined the body, not on the day that Cornelius died, when he was sent for, but after that Cornelius had been in the earth for two days, and that in the Summer season ? This appears to us to be inconceivable, and even impossible, to us, who from all the combined evidence cannot find the least proof that anything was the matter with Cornelius previous to that unfortunate Thursday. Other sentiments and convictions impress our minds, namely that after the cruel ill treatment, and especially the blow on his head, exposed to the heat of the sun, and other sufferings till the very hour of his death, the inflammation may have been caused by *the blow* and aggravated by exposure to the sun, as being *external, violent exposure to the rays of a powerful sun, exposure to excessive heat, &c.*, which the Doctor in his answer to the 2nd interrogatory states to be causes that occasion inflammation. If we now look at the Doctor’s answers to the 1st and 5th interrogatories, we shall there find a complete contradiction. In the first he says *It (namely inflammation) is not invariably a fatal disease, and if medical assistance had been called in in time, he could have recovered.* And in his answer to the fifth, he says *It is difficult to give a decided opinion on this point, namely whether medical assistance could have saved the boy.*

Compare further his answers to the 3rd and 4th interrogatories, and they will be found to contain similar contradictions.

If Doctor Shand mistakes in this manner, surely then it cannot be amiss of us that we are brought under this unpleasant idea, that from the commencement of this business he has been misled in his judgment by erroneous elucidation or prejudice. And who is so unacquainted with the human heart as not to agree with us how difficult it is to remove a prior opinion, once rooted and expressed, and especially when animated by a feeling of pity which has, or can have, a tendency to assist or preserve an unfortunate fellow creature. The whole connection of Doctor Shand's evidence therefore, however flattering it may appear at first sight, comes to this: *had the slave Cornelius not received the blow on his head, or on the brain, he had certainly not, or at least not so soon, died, or he could have probably been cured of the disease supposed by the Doctor.* It would however have been better for the conscientious judge if Doctor Shand, when he examined the body at the inquest on the 8th of September last, which he knew was held in consequence of an information of ill treatment given by the slave Solomon, had not confined himself to the opening of the head, but had examined the internal state of the body also; or that the opinions of other medical men had been taken on his *judicium Medicum*. But if we take into consideration all that has happened in connection with the weak constitution of the late Cornelius, in consequence of which he could not work as much as others, then the Appellant is punishable for his conduct according to the *L. 7, 5 ff, ad leg. Aquil*, where Ulpianus says "*Si quis servum ægrotum leviter percusserit et is obierit recte Labeo ait lege Aquilia eum teneri, quia aliud alii mortiferum esse solet.*"

And that Judges may be misled and induced by indefinite or inaccurate acts of inquests and declarations of doctors, that a wound is not mortal, to consider wounds or *blows* not mortal, which they as Judges are bound to hold as the *cause of death*, as in the case before us, we find a striking example of and a very applicable one to this case in the learned Huber.

Shall your Worships now consider the wound in question not mortal, because that according to Doctor Shand's evidence it is not *invariably fatal*, without taking into consideration the circumstances and the consequences of that wound which most assuredly occurred with the late Cornelius? No, this we

ought not, nor cannot expect from your Worships after you have read the case we have quoted from Ulpianus, who although well aware that a slight wound is not mortal *in general*, still however considers it fatal in the case quoted, namely of a sick person.

The Appellant therefore and no other person was the cause of the death of Cornelius, not only because he repeatedly inflicted undeserved punishments on a sick body, but also a wound which, even according to the evidence of Doctor Shand, hastened his death. He is therefore guilty of the crime which is called in the Criminal Law *imprudent homicide*, which Van der Linden, in his Manual, Page 240, describes thus: "*when, although there has not been any direct or indirect intention to kill, still however an act is committed which, if sufficient caution had been observed, could have been avoided.*"

That such an act as this we have now described has been committed, sufficiently and evidently appears from all that has been said; and we therefore can safely conclude in the fullest confidence that your Worships will not be guided by our remarks alone, but comparing them with the records of this case and the documents appertaining thereto, give an impartial judgment; and this leads us to make the following conclusion:

For which and other reasons the Advocate for the Secretary of Stellenbosch acting R.O., answering in Appeal, concludes that the Appellant in this case shall be declared not aggrieved by the sentence of the Board of Landdrost and Heemraden of Stellenbosch, dated the 18th December 1822, cum expensis, or otherwise do justice as to this Worshipful Court shall seem meet.

The Court having read and examined the Records of the trial held in the first instance, having heard the arguments advanced on both sides in appeal, and taken everything into consideration which deserved attention or could move the Court, administering justice in the name and on behalf of His Britannic Majesty, declares the Appellant to be aggrieved by the sentence in question of the Board of Landdrost and Heemraden of Stellenbosch, dated the 18th December 1822, and therefore, correcting the same, condemns the Appellant to be confined for twelve months in the prison at Stellenbosch, with

condemnation of the Appellant in the costs incurred as well in the Court below as in this Appeal, to be taxed and moderated by this Court; and rejection of the further or other claims made in the first instance.

Done at the Cape of Good Hope, day and year as above, and pronounced the same day.

(Signed) J. A. TRUTER,
C. MATTHIESSEN,
W. HIDDINGH,
WALTER BENTINCK,
J. H. NEETHLING,
F. R. BRESLER,
J. C. FLECK,
P. S. BUISSINNE,
P. J. TRUTER, Junior.

In my presence,

(Signed) D. F. BERRANGÉ, Secretary.

[Enclosure 4 in the above.]

General Table of Fees, Charges, and Costs, both in Criminal and Civil Cases, on the part of all Judges, Public Prosecutors, Secretaries, Practitioners, and inferior Officers of the respective Courts of Justice, in Cape Town and in the several Country Districts, established by the Worshipful Chief Justice and the Court of Justice, at the Cape of Good Hope, by Approbation and Sanction of HIS EXCELLENCY MAJOR GENERAL SIR RUFANE SHAW DONKIN, K.C.B., Acting Governor, Commanding in Chief His Majesty's Forces, &c., &c., which, in future, is to be observed and acted upon by all the Courts of Law throughout the Colony.

The Members and Secretaries of the Courts.

Art. I. For attendance in holding Courts, and for Recording, for each day or less, 2 Rds.

But when acting without their place of Residence, 4 Rds.

Art. II. In Criminal Cases, said Charges for Attendance only to be made as follows:—

- (a) For collecting of preparatory Informations.
- (b) For holding of Inquests and other local Inspections.
- (c) For the trial of minor Offences.

(d) For investigating into and trying Crimes, subject to public Punishment.

But with the following Modifications and Restrictions, viz. :—

1st. In the event of the Investigation and the Trial taking place in one day, the Charge shall not be made for every of these Acts separately, but for one day's Attendance only.

2nd. If the Prosecutor is not allowed to charge Fees to the Defendant against whom the Verdict is given, in such case no Fees for the Judge or Secretary shall be charged to him.

3rd. If a Case be tried before the full Court of Justice, no Fees for the Attendance of the Members shall be charged.

Art. III. When in Civil cases, exclusive of the Fees for Attendance mentioned in the preceding 1st Article, any additional Expence, and particularly any Disbursements may be necessary, the Petitioner for a Judicial Inspection shall be held to sequestrate previously at the Secretary's Office of the Court, the Sum of Money required for such additional Expence.

Art. IV. The Charges for the Secretary of the Court shall be as follows :—

	<i>Rds.</i>	<i>Sts.</i>
For the entry of the Summons on the List of Cases, and recording the Trial	1	30
For recording Criminal Trials, including the examination of the Witnesses, per Page of 20 Lines	0	12
For recording and promulgating of a Decree, Order of Court, or Sentence	1	30
For making out a Report to the Court, containing four Pages, or less	2	0
For each additional Page	0	24
For Copies of any Writings, containing four Pages of 20 Lines, or less, per Page	0	24
For every further Page	0	12
For scoring out a Summons from the List, previous to the opening of the Court	1	30
For noting an Appeal	1	0
For noting the abandonment of an Appeal	1	0
For noting the revocation on the Minute of any Deed, in the Protocols deposited in the Secretary's Office of the Court	1	0
For verifying a Document, and affixing the Seal of the Court	1	24
For certifying a Bill of Costs in a simple Case	0	24
For making out a Bill of the Charges of the Court	1	0
For signing a Copy or Document, whatsoever, granted at the Secretary's Office of the Court	0	24

On all Sums of Money deposited or sequestered at the Secretary's Office of the Court, 2½ per Cent.

Art. V. Copies of Sentences passed in favor of, or against English Inhabitants, dispatched from the Secretary's Office of the Court, shall be accompanied with English Translations, made by the English Assistant Secretary, and signed by him, for which no other Charge is to be allowed than the usual Stamp required for such Translations by the Stamp Duty Regulations.

Art. VI. Besides the above Judicial Costs, the litigating Parties, not appearing at the appointed time before the full Court, or their Commissioner, on a Summons or other official Warning, shall be charged with the following Fines, established by the Proclamation of the 1st January, 1819, viz.: Five Rixdollars for the first Non-Attendance; Ten Rixdollars for the second; and Fifteen Rixdollars for the third Non-Attendance.

Art. VII. Public Prosecutors.

His Majesty's Fiscal, and the other public Prosecutors, have the Right, in all Prosecutions carried on by them officially, to charge Fees to the Defendant, if he be condemned in the Costs; in which event, if the Crimes be liable to public Punishment, they shall have the option of either charging double the Fees allowed to the Proctors, or single the Fees according to the Table for the Advocates; and in minor offences, described in the third Chapter of the Mode of Proceeding in Criminal Cases, single Fees, according to the Table established by the Court of Justice, on the 6thth March 1817, at the Suggestion of His Majesty's Fiscal, and which is as follows:

	<i>Rds.</i>	<i>Sts.</i>
For making out the Summons to be served on the Defendant, the Complainant, and the Witnesses	0	24
For receiving and perusing the Return of the Messenger	0	24
For drawing and filing the Case	1	0
For making Memorandums in Court	1	0
For attendance at the Examination of Witnesses, at each Sitting, on each day	2	0
For making his Indictment	1	0
For hearing the Defence and Closing the Proceedings	2	0
For hearing the Promulgation of the Sentence.	0	36
For bespeaking, receiving, and perusing the Sentence	1	0

	Rds.	Sts.
For drawing up and forwarding (if necessary) the Warning for Compliance with the Sentence, and the Renewal thereof	1	0
For receiving and perusing the Returns of the Messenger	1	0
For making out the Bill of Costs	1	0

Art. VIII. This Right of Public Prosecutors shall, however, be subject to the following Modifications and Restrictions :

(a) In Crimes liable to public Punishment, the Prosecutor shall not charge any Fee to such Defendants, to whom, agreeably to Article 86 of the Mode of Proceeding in Criminal Cases, the Assistance of a Practitioner to proceed *in forma pauperis* was granted.

(b) In the Trial of minor Offences, in which no Practitioner was allowed, the Prosecutor shall not charge any Fees to the Defendant, to whom such Practitioner may have been granted to act for him *in forma pauperis*, and who shall have proved, to the satisfaction of the competent Court for the Trial in question, that he is entitled to such indulgence.

(c) On a rehearing before the full Court, the Court shall fix in the Sentence the Rate of Fees, which the Prosecutor shall be entitled to ; which, however, in Cases subject to public Punishment shall not exceed Fifty Rixdollars, and in minor Offences, shall not exceed Twenty-Five Rixdollars, whether the Prosecutor carries on the Rehearing himself, or whether it be done by his Agent, or by one of the Advocates.

(d) In the Trials of Slaves, if they be returned to their Owners, no Fees shall be charged to them by the Prosecutor ; but the Masters receiving their Slaves back after the Trial, shall only be liable to refund the Expences which attended their Support, Medical Assistance, Conveyance from one place to another, or such like Purposes, which have been paid out of, or incurred by, the Colonial or Districts' Treasury.

Art. IX. Advocates.

The Advocates shall continue to observe the Table of Fees, of the 29th June, 1809, but altered and modified in the following manner, viz. :—

	Rds.	Sts.	Sts.
1. For Right of Consultation in complicated Cases, according to circumstances, but not exceeding	6	0	0
2. Consultation or Conference, concluded within an Hour	1	4	0

	<i>Rds.</i>	<i>Shs.</i>	<i>Sts.</i>
3. Examination of Documents, and noting of Remarks, per Page	0	1	0
4. Studying of the Law, per Hour	3	0	0
5. For a verbal Advice	1	4	0
6. An Opinion in Writing, containing one Sheet or less, written in the usual manner	3	0	0
Each succeeding Page	0	6	0
7. For perusing, correcting, and signing of such Opinion .	0	6	0
8. Examining, confirming, and signing of an Opinion given by another	1	4	0
9. Consultation on two or more different Questions, although by the same Person ; or if two or more Questions are contained in one Instrument, having no connection with each other, each Consultation and Opinion may be charged separately, at the above- mentioned Rate.			
10. A Conference for making or receiving a Report, or Return, not including an actual Opinion	0	6	0
11. If acting to consult without their Office, for each Call within Cape Town	0	6	0
Without the Town, per Day	4	0	0
(Exclusive of the Fees for Consultations and other Business.)			
12. For attending before Commissioners by Order of the Court, or at the Request of the Parties, for the purpose of an amicable Settlement, if it be effected	3	0	0
If not effected	0	6	0
13. For all Memorials containing two Pages ordinary Writing	1	4	0
For each further Page	0	2	0
14. For perusing and signing a Memorial	0	4	0
15. For filing and recommending the same	0	4	0
16. Drawing the first Summons, in complicated or dis- putable Cases	1	4	0
17. A further Summons	0	3	0
18. A Deed for Attachment or Interdiction	1	4	0
19. Sommation and Renovation, each	0	6	0
20. Receiving and examining Returns	0	6	0
21. Drawing of Cases or other Writings, with Articles, for each Article containing 2 or 3 Lines	0	1	0
(The Head to be computed at 4, and the conclusion at 6 articles.)			
22. Writings, not in Articles, including Pleadings, for each Page of 20 Lines, with observance of the 6th Art. of the Stamp Duty Bill	0	6	0
23. Fair Copies of Cases and other Writings, per Article .	0	0	2
If not with Articles, per Page	0	2	0

	<i>Rds. Sks. Sts.</i>
24. Perusing and correcting the same, per hour	0 6 0
25. Signing	0 4 0
26. Assorting, marking, sealing, superscribing, and annexing the Documents to the Cases, &c.	1 0 0
But if more than six	2 0 0
27. Attendance in Court, if the suit be closed in one Day	1 4 0
28. But otherwise, for each hearing	0 6 0
29. Pleading or verbal Statement, per Hour	1 4 0
30. Hearing the Pleading or Statement of the adverse Party, and taking Notes, per hour	1 4 0
31. For hearing a Sentence or Decree	0 6 0
32. Writing a common Letter	0 6 0
33. But when the same contains an Opinion	1 4 0
34. Perusing a Letter received	0 4 0
35. Drawing Interrogatories or cross Questions, for each material Article	0 2 0
36. Attendance in Court, at the Recollection of Depositions or Interrogatories	1 0 0
But if effected at the Dwelling House of the Witness, or elsewhere	2 0 0
37. Perusing of Documents, per hour	1 0 0
38. Making out the Bill of Costs	1 0 0
39. On all Disbursements proved by Vouchers, 5 per cent.	
40. In all simple cases, in which an Advocate, availing himself of the liberty granted to him by the 134th and 136th Articles of the Regulations enacted for the Court of Justice, acts in the Capacity of Proctor, he shall be held to observe the Table of Fees for the Proctors.	

Art. X. Proctors.

The Proctors shall observe the Table of Fees of the 29th June, 1809, here inserted :—

	<i>Rds. Sks. Sts.</i>
1. For a Consultation, and noting the Instruction of Client, in simple Cases	0 4 0
2. In complicated or disputable cases	1 0 0
3. If the Consultation takes up more Time than an Hour, then for each hour	0 6 0
4. This is to be understood, when Clients call on their Proctors; but if sent for by their Clients, and calling upon them, the Proctor shall, independent of the above Fee, be entitled to charge for his calling, viz. in Cape Town	0 4 0
5. But without Town, besides free Conveyance	1 0 0
6. But if he be obliged to stay out the whole Day, then per Day (Exclusive of his Consultation and other Business)	3 0 0

	<i>Rds. Sks. Sts.</i>
7. For the first Summons	0 6 0
8. For a further Summons	0 2 0
9. Attendance in Court, in common Cases, closed in one Hearing, in one Day	1 0 0
10. But otherwise, at each Hearing	0 4 0
11. For drawing and making a fair copy of a Claim, Defence, Reply, Rejoinder, or other Memorial, per Article, to be computed at 4, and the Conclusions at 6 Articles	0 0 4
12. For perusing and correcting the same, per Hour	0 4 0
For the Signature	0 4 0
13. For assorting, marking, sealing, superscribing, and annexing the Exhibits to a Claim, or other Memorial	1 0 0
14. For hearing the Promulgation of a Sentence or Decree	0 4 0
15. For a Petition, containing two Pages ordinary Writing	1 4 0
16. For each additional Page	0 2 0
17. For perusing and signing the same	0 4 0
18. For presenting and recommending the same	0 4 0
19. For a Warrant of Arrest or Interdiction	1 0 0
20. For a Sommation and Renovation each	0 4 0
21. For receiving and examining the Returns	0 4 0
22. For drawing Interrogatories or cross questions, for each material Article	0 1 0
23. Attendance in Court, at the Recollection of Depositions	0 4 0
24. But in case of it being done at the Dwelling House of the Witness, or elsewhere	1 4 0
25. For Attendance before Commissioners, for the purpose of bringing the Parties to an Agreement, either by Order of the Court, or at the request of the Parties, if an Agreement be effected	2 0 0
26. But not succeeding	0 4 0
27. For examining and perusing of Documents, and noting Remarks per hour	0 6 0
28. Writings, not articleed, per Page of 20 Lines	0 4 0
29. For writing a Letter	0 4 0
30. Perusing a Letter received	0 2 0
31. For a Conference tending to give or receive a Report or Return	0 4 0
32. For making out the Bill of Costs	1 0 0
33. For all actual Disbursements by Vouchers, 5 per Cent.	

Art. XI. Advocates and Proctors.

1. In simple Cases, the Advocate or Proctor for the Plaintiff shall charge no more for Fees, up to the time of his receiving and perusing of the Sentence exclusive, than Fourteen Rix-dollars ; up to the enforcement and settlement of the Sentence,

no more than Twenty-one Rixdollars and Four Skillings ; and should the Case in the course of the Proceeding have been referred to Commissioners for compromise, or otherwise, Twenty-four Rixdollars ; and acting for the Respondent, up to his Report of the Sentence having been promulgated inclusive, Nine Rixdollars ; up to the receiving and answering of the Demand to comply with the Sentence, and the Renewal thereof, Eleven Rixdollars ; and should the Case in the meantime have been referred to Commissioners as aforesaid, Thirteen Rixdollars and Four Skillings. This Restriction is made agreeable to the Table of Fees for the Proctors, and a Form thereof lodged in the Secretary's Office of the Court of Justice, for the Information of all whom it may concern.

2. In Case of a Re-hearing before the full Court, or of Civil Imprisonment, in consequence of non-compliance with a Condemnation for Payment, or Authorisation *de facto*, and the like, the Amount of Fees to be charged to the Party who loses the Cause, by the other Party, shall be fixed in the Sentence, and which, in no instance shall *exceed* the sum of Fifteen Rixdollars.

3. In Cases for the recovery of Vendue Debts, not exceeding Three Hundred Rixdollars, no more than the half of the Rate of Fees allowed for simple Cases, shall be charged to the Debtor.

4. In disputable Cases, no more than one Conference or Consultation shall be charged to the opposite Party from the one hearing of the Case up to the other, unless in troublesome Cases, consisting in many Facts, more Conferences appear to have been absolutely necessary, to which due attention is to be paid at the Taxation of the Bill of Costs.

5. The taxed Lawyers' Bills shall, in Insolvent Estates, be preferent to the Claims of the concurrent Creditors, and the Bills relating to the Prosecutions for preference Claims, shall stand on the same footing with such preferent Claims, as a Sequel of the same.

6. No person can be compelled to pay a Bill of Costs, for a simple Case, unless the same be certified by the Secretary, or one of the Head Clerks of the Court, to have been made out *according to the Order* ; and respecting Trials, unless such Bills be taxed, and, if necessary, moderated by the Sitting Commissioner.

7. Bills of Costs in simple Cases, exceeding the amount established in Sect. No. 1, Art. 1, of this Table, in consequence of additional Trouble, shall also be subject to the Taxation and moderation of the Acting Commissioner of the Court, to whose satisfaction such extraordinary Charges must be justified.

8. The Acting Commissioner shall, on every Monday, fix the Day on which he will sit for the Taxation of Bills of Costs in the course of that Week, of which the respective Practitioners may be informed at the Secretary's Office of the Court on the following Tuesday.

9. The Practitioners may summon their Debtors for Costs, to appear on the appointed Day, in order to see the Bills taxed, and to object thereto, should they think proper, and to hear request for Condemnation; provided the Summons, (which is to be accompanied by a Copy of the Bill to be delivered to the Debtor) be served on him, at least 48 hours before the Day fixed for that Purpose, and the original of which Bill is to be produced at the Secretary's Office of the Court, also two Days before.

10. The Summoned shall be at liberty to appear, either in Person or by Proxy, on the appointed Day, and to state his Objections; whereupon the Commissioner shall effect the Taxation and Moderation, with Decree, if necessary, of Condemnation, as to him shall seem just, according to the Merits of the Case.

11. Should the Condemnation exceed Fifty Rixdollars, but not otherwise, the Case shall be subject to a Re-hearing before the full Court, provided it be prosecuted and closed by the Appellant on the next ensuing Court-day.

12. In the last-mentioned Instances, either before the Commissioners or the full Court, only one Default shall take place, and for the Benefit thereof, the Court shall proceed to Taxation and Condemnation, as may be deemed expedient.

13. No charge shall be allowed in the Bills of Costs, which is not particularly mentioned in the Table of Fees, unless it be necessarily connected with Business for which Fees are allowed by the same; in which case, such Charges shall be allowed, according to the Analogy of said Tables.

14. For English Translations of Summonses, which are to be brought before the Court, no other Charges will be allowed

than by the Page, containing the usual Number of Lines and Letters.

15. No Charges shall be allowed for Translations of Insinuations, Protests, or the like, served on English Subjects, not directly belonging to the essential part of a Judicial Proceeding, but the Original of such Deeds are to be made out in English, and served in the English Language, and for which no higher Charge is allowed, than what is fixed in the Tables of Fees for similar acts in the Dutch Language.

16. No Commission shall be allowed on Monies received pursuant to a Sentence.

17. All Bills of Costs must be collected within One Year after the Promulgation of the final Sentence, or after the dismissal of the Suit; and if not, all Right to such Bills shall be forfeited, unless Remedy is granted on grounds admitted in Law; but at all events, with forfeiture of the Right of Preference.

Art. XII.

Attornies acting before the respective Boards of Landdrost and Heemraden of the Cape District, and in the Country Districts.

Those who in particular Cases are allowed to act for others, either as Plaintiffs or as Respondents, in the Court for Petty Civil Cases in Cape Town, or before the Boards of Landdrost and Heemraden, must be provided with a special Qualification, and shall be entitled to the following Fees, and no more, viz.:—

	<i>Rds.</i>	<i>Skls.</i>
(a) The Attorney for the Plaintiff,		
For an Interpellation	0	4
For a Summons	0	4
For their Trouble in Cases not brought before the Court, but settled after the serving of the Summons, or cancelled from the List	2	0
For the Trouble in Cases not amounting to 200 Rds. brought before the Court, including all Proceedings on that Occasion	4	0
Ditto, ditto, in all Cases exceeding 200 Rds.	5	0
Should the Case be heard in more than one Session of the Court, for each further Hearing	2	0
No charge shall be made for hearing the Promulgation of a Sentence, unless nothing else be done in the same Case on the same Day, and the Fee for Attendance shall then be	1	0

	<i>Rds.</i>	<i>Shs.</i>
For proceeding on to enforce a Sentence, the final Settlement thereof included	2	0
(b) The Attorney for the Respondent, For Attendance and all other Business transacted for the Defendant, at the first Hearing	2	0
For each succeeding Hearing	1	0
And in both Cases, for making out the Bill of Costs	0	4

Art. XIII.

The Messengers of the Courts.

For serving of the under-mentioned Documents, and their Return, viz. :—

	<i>Rds.</i>	<i>Shs.</i>
(a) Of a Summons, Interpellation, Denunciation, Protest, or Insinuation	1	0
(b) A Demand to comply with a Sentence	0	6
(c) Renewal of the same	0	6
(d) An Arrest of Attachment	1	0
(e) A Judicial Warning to make Payment	1	0
(f) A simple Warning	0	4
(g) A simple Interpellation	0	4
(h) Summoning in Civil Cases, for each Person	0	4
(i) Idem in Criminal ditto	0	2
(k) For attending the Court, and repeating the Names of the Parties, for each Case, whether any of the Party be called out or not	0	2
(l) For Attendance at the Session of Commissioners, and other Sessions in Civil Cases, for each Case, whether the Party be called out or not	0	4
(m) For similar Duties as mentioned in the two last preceding Articles, but in Criminal Cases, in which Fees and Judicial Costs are allowed	0	2
(n) Any of those Duties having been performed without the Place of Residence of the Court, or on Board of any Vessel, or after Sunset, said Fees shall be charged double; besides which, the Messengers shall have the right, when, in the serving of any Document without the Place of Residence of the Court, they are obliged to stay out longer than one Day, to charge for each Day	1	0
(o) For the serving out of Summonses, and the like, at Places situate within Three Hours' Ride on Horseback from the Residence of the Court, no more than one Day's Horse Hire shall be allowed		—
(p) Extraordinary Expences shall not be allowed in the Messengers' Accounts, unless the same be certified by		

the Landdrost or other Magistrates of the District, to be warrantable, and actually have been necessary.

(g) The Demand to comply with a Sentence, and the Renewal thereof, shall, in the Country Districts, be served on one and the same Day ; unless the Person on whom the same is so served, being questioned on the Subject by the Messenger, and by him also informed of his Competency to serve said Demand on one Day, may chuse, that the Renewal be not served before the expiration of 24 Hours after the first Demand ; in which case, the Messenger shall be allowed to charge Horse Hire for the next Day, provided it be specially entered in his Return, that such Question and Information, and Request, had taken place.

Art. XIV. The Stamps and other Disbursements, are not included in the Fees established in the Premises.

Art. XV. Each inferior Court is likewise competent to tax and moderate all Bills of Fees and Disbursements, arising from Proceedings carried on before them, agreeably to the purport of Art. 7, Nos. 9 and 10 ; which Taxation and Moderation, provided the Amount of the Bill exceeds Twenty-five Rix-dollars, but not otherwise, shall be subject to an Appeal, with this Restriction, however, that a Sentence of Taxation and Moderation, to the Amount of One Hundred Rixdollars, notwithstanding such Appeal, may be enforced upon Security.

Art. XVI. The Officers of any Court, demanding or receiving any Fee, or Judicial Costs, for their own private Account and Benefit, shall be forthwith dismissed.

Art. XVII. The Practitioners or other Persons requiring anything from the Secretary's Offices of the respective Courts, must immediately pay the Costs thereof, and no Credit whatever given ; with this understanding, that for as far as the dispatch of Administration of Justice may render necessary the giving of Credit to Practitioners, in some Instances, all Arrears must be settled previous to the end of each Quarter ; and in default thereof, and in order that the necessary Regularity may be observed, the Head Clerk of the Court, who has the charge thereof, shall deliver to the Secretary, at the expiration of each Quarter, a List of what is still unpaid, in spite of this Regulation ; which List shall be produced by the Secretary at the next Session of the Court, in order that the Court may

then adopt such Measures against the Defaulters, including the said Head Clerk, for as far as he may have neglected his Duty, as may seem best calculated for the Interest of Government, and to prevent the recurrence of similar neglect.

Thus done by the Chief Justice and the Court of Justice, on the 7th April, 1820, approved by His Excellency the Governor and Commander in Chief on the 19th of the same Month, and promulgated in Court, on the 3rd of August following.

(Signed) J. A. TRUTER, Chief Justice.

By Order of the Court,

(Signed) D. F. BERRANGE, Secretary.

[Enclosure 5 in the above.]

Evidence of DANIEL DENYSSEN, ESQRE., His Majesty's Fiscal, upon the Criminal Law and Practice of the Cape of Good Hope.

CAPE TOWN, 15th August 1825.

In what year were you appointed to the office of Fiscal in this Colony ?

Reply. I was appointed in August 1812, and have held the situation ever since.

You had formerly a seat upon the Bench and likewise practised as an advocate in this Colony ?

Reply. I sat upon the Bench from the year 1803 to the month of April 1806. I obtained my discharge with a special condition that my rank was to remain, and I was allowed to practice as an advocate, which I did from the year 1806 till 1812.

You were educated to the Law in Holland ?

Reply. I was at the University of Leyden, and took my degree of Doctor of Laws.

Has the salary that you now receive been augmented since your first appointment ?

Reply. It was raised from 10,000 rixdollars per annum to 15,000, I believe that the augmentation was in consequence of the depreciated state of the currency.

Has the number of assistants in your office been augmented since your first appointment ?

Reply. By the appointment of a resident of Simon's Town I have received the assistance of a second Deputy Fiscal in my office, the former having been till then either 1st or 2nd Deputy Fiscal, altho' residing at Simon's Town, and performing the duties of that place. Since that time, altho' two Deputy Fiscals have been attached to my office, one of them has been appointed by Proclamation of the 3rd July 1818 to act as agent for the Landdrosts, which occupies a large portion of his time. There were always four clerks in my office, but owing to the changes that have taken place and the appointment of Mr. Auret to conduct petty criminal cases before the Commissioners of the Court of Justice, I have only the service of three.

By whom was the business of the Landdrosts conducted before the appointment of Mr. Lind ?

Reply. By the advocate De Wet.

What were the reasons that recommended the Duties of Agent for the Landdrosts to be transferred from Mr. De Wet to Mr. Lind ?

Reply. I believe that it was principally with a view to economy that the transfer was made. The Landdrosts used formerly to pay the salary of their agent out of their own pockets, the salary of Mr. Lind is now a charge upon each District.

Do you believe that their Duty is a very laborious one ?

Reply. I think it is.

In what does it consist ?

Reply. In conducting all criminal Prosecutions that are carried on in the name of the Landdrost before the Court of Justice and in affording them professional advice and assistance.

Does Mr. Lind then conduct criminal cases of every description, comprising capital cases that arise in the Districts ?

Reply. He does, in pursuance of the 10th article of the Crown Trial, saving my right of Prevention as His Majesty's Fiscal.

Do you consider that the change was beneficial to the Public service ?

Reply. I believe that the principal advantage has consisted

in a saving of public money. Mr. De Wet having (as I understood tho' I do not speak positively) demanded a larger sum for his services than the Government have thought proper to allow.

Is the time of Mr. Lind wholly occupied with his business of Agency for the Districts, and is he unable to afford you any assistance in the general duties of your office ?

Reply. He does render me very material assistance in the duties of my office.

Had Mr. Lind practised as an advocate before his appointment to the situation of Deputy Fiscal ?

Reply. He had not, he was appointed soon after his arrival ; he had formerly been employed as a clerk in the office of Mr. Ryneveld, after which he went to Europe and entered upon a course of study and took a degree.

By what rules and regulations are you guided in the exercise of your official duties ?

Reply. By the Instructions that have been issued for the Fiscal previous to the establishment of the Batavian Government in 1803, and by those that were issued by that Government during the period of its rule. I have conceived that in the appointment that took place of Mr. Van Ryneveld in the year 1806, and the combination of duties that is announced in his appointment, of Fiscal and Attorney General (as well as that of Vice President of the Court of Justice in cases when he did not act as Prosecutor) it was the intention of the Government to unite the powers of the old and new instructions, and I have considered that they devolved upon Mr. (now Sir) J. Truter and myself as his successor.

Does your appointment contain any special reference to that of your Predecessor, and is it by commission or otherwise ?

Reply. It was inserted in the *Gazette* dated 29th August 1812, and declares that His Excellency the Governor was pleased to appoint me to be his Majesty's Fiscal in this Settlement ; the terms are the same that appear in Sir J. Truter's appointment to the same office.

Have you found that the powers conferred by the instructions of Mr. Commissary De Mist upon the Fiscal as Procurator General, have enlarged those that appertained to the Fiscal alone previous to the year 1803 ?

Reply. I have not. The description of the Fiscal's Powers are more detailed in the instructions of Mr. De Mist, but the leading features are the same.

Have you or your predecessors ever exercised the right of sitting in the Court of Justice as Vice Presidents ?

Reply. Neither of us have. On the appointment of Sir John Truter this Authority was omitted, as being considered inconsistent with the duties of the Fiscal.

Do you believe that it appertained to the office of Fiscal in Holland ?

Reply. I believe that in some municipalities of Holland the Fiscals have exercised the right, but it was more in point of rank than of authority.

Do you conceive that the powers of the Fiscal and the Procurator General as now exercised by you resemble nearly those that are exercised by the same functionaries in Holland ?

Reply. I believe they do, with this difference, that the Procurators General are not considered as the official advisers of the political authorities.

Has it occurred that capital offences have sometimes been tried before the Commission of Circuit ?

Reply. They are by the third article of the Crown Trial allowed to be tried before the commission of circuit, but must be submitted to the Court of Justice for Judgment.

To what extent do the Proceedings of the Trial proceed before the Commission of Circuit ?

Reply. They go through the trial to that Point in which the Judge declares that the investigation is closed. The Proceedings are then transmitted to Cape Town with the prisoner, and Mr. Lind, the Deputy Fiscal, in case he is admitted by the Court, makes his claim for punishment. To this the prisoner replies, and the Court proceeds to give judgment.

Do you know what may have been the reasons for dividing the Proceedings in the same cause between the Judges of Circuit and the Court of Justice ?

Reply. The principal reason I believe has existed in a wish to save the heavy expences of sending witnesses to Cape Town to give their evidence. Local reasons may have also contributed to make it desirable that the investigation of a crime should take place in or near to the District in which it may have been

committed, and as all the members of the Court of Circuit are not professionally educated, it may have been considered that the jurisdiction over capital offences was rather too important to be wholly remitted to them.

Have difficulties arisen in the District Courts as to the Jurisdiction of the Landdrosts and the distinctions of crimes that are laid down in the 2nd and 4th articles of the Crown Trial ?

Reply. Such difficulties have from time to time occurred, and the Landdrosts have then referred the cases to the Court of Justice.

In such cases is it usual to consult you ?

Reply. It is not.

To what length in the investigation do the Landdrosts proceed before they make the reference to the Court of Justice ?

Reply. I think that they proceed as far as the preparatory informations.

Do you conceive that the mode of Criminal Proceeding has been much improved by the regulations of the "Crown Trial ?"

Reply. In point of expedition the improvement has been considerable, altho' there are many points in which I think the "Crown Trial" is yet susceptible of more.

Were you consulted in the formation of the Crown Trial ?

Reply. Sir J. Truter communicated the draft of it to me, and some articles were added at my suggestion.

Were the criminal proceedings previous to the Crown Trial of an intricate nature and long ?

Reply. They were sometimes long, and by practice had become complicated; they have I think been beneficially abbreviated by the Crown Trial.

Do you think that the administration of the Criminal Law has been improved by giving to the Landdrosts and Heemraden the cognizance of criminal offences conferred upon them by the proclamation of 1817 and the augmentations that have been made to their power in the Crown Trial ?

Reply. It has contributed much to accelerate the progress of criminal investigation throughout the Colony, and has been in so far generally useful.

Do you recollect that any abuses of the extended power and

jurisdiction conferred upon the Landdrosts and Heemraden by the Crown Trial Regulations have occurred ?

Reply. I have no recollection of any intentional excess of power committed by them, but I recollect one case that merited correction in Swellendam, where the punishment of public scourging and branding was inflicted. Two cases occurred at Swellendam in the year 1818, one of Adrian, slave of Mr. J. Meyer, and the other of Hendrik January, a Hottentot, wherein the offenders were condemned to the punishment of public scourging and branding. I have no recollection in what manner the informality was redressed, but the punishment of branding had not been inflicted. At that time the jurisdiction of the Boards of Landdrost and Heemraden in criminal cases was founded on the proclamation of the 18th July 1817.

Then you do not seem to think that any disposition has been evinced amongst the magistrates of the Interior to extend their powers of criminal punishment ?

Reply. I do not.

Have you found them active in the investigation of crimes ?

Reply. I have found them generally so.

Do you conceive that you as Fiscal possess any original power of prosecuting either a Landdrost or Heemraad for any excess of power, or for neglect of their duty ?

Reply. I do, founded upon the instructions of the Fiscal dated 2nd July 1785, Article 11.

Have you the power of determining whether you will enter upon the investigation of a charge against an individual, and of which you have received information, either on account of want of evidence to support the charge, or any other reason that may appear to you to render such investigation inexpedient ?

Reply. When I have proofs or conviction in my own mind that a crime has been committed by such and such a person, I am bound to prosecute, and no option is left to me, but the mode in which that conviction influences my mind is a matter of discretion.

You are not bound to submit your proofs to any person ?

Reply. I am not, but they are always taken judicially, and the Court of Justice has the power of determining whether the person accused shall be prosecuted or not, so that in this respect my discretion is limited ; the decrees also for personal summons

or imprisonment in consequence of a criminal charge are made upon preparatory examinations, and are in the breast of the Court. I should except petty cases described in the 3rd section of the Crown Trial, where no decree is required for personal summons.

Have many cases occurred in which you have declined to prosecute upon the information of individuals ?

Reply. I make it my duty to inquire first into the truth of the information that I receive, and if I see reason to disbelieve them I decline to prosecute. It is not easy for me to say in how many instances this may have happened.

In what part or parts of the criminal Law are the punishments of crimes defined ?

Reply. In the ordinance of Philip the 2nd of the year 1570 the Judges are ordered in criminal cases to decide according to the Netherlandic Law, and where that is silent or deficient to refer to the Roman Law. I have an Instruction to the same effect in the Instruction dated 17th July 1785, Article 5, as well as in the old Instructions dated 1693.

Do you find that by these codes the punishment of particular crimes is exactly defined and laid down, or is it left "ad arbitrium Judicis" ?

Reply. In some cases we find that the punishments are not specifically laid down, and the punishments assigned by the Roman Law are sometimes such as cannot be applied. In such cases the punishments of crimes are left to the discretion of the Judge.

Are many of the criminal laws now in use in the Colony derived from the Batavian Statutes ?

Reply. Very few, and those chiefly relating to the slave population.

I see that in the 14th article (Title Slaves) of these statutes it is ordered, that in case a person should beat his slave to death, or otherwise kill him, he shall be corporally or otherwise punished according to the circumstances of the case, and the parents or children of such slaves shall be sold on his account. Do you conceive that such is the state of the law at this day ?

Reply. I believe that the first collection of the Batavian Statutes made the killing of a slave by his master punishable with death, but that enactment has been modified in the recent

collection of statutes dated 1766, article 14. The Batavian Statutes refer to the Roman Law upon this subject, and I have always considered that that Law punishes the wilful killing of a slave with death.

What is the state of the law with regard to the evidence of slaves ?

Answer. I conceive that this question is entirely regulated by the Roman Law, which in my opinion admits the evidence of slaves in cases in which other proof cannot be procured. The same Law however excludes their evidence for or against their masters, except in certain particular cases. Upon this subject I beg to refer you to the opinion that I submitted to Governor Sir J. Cradock.

Do you conceive that the state of the law has been enlarged or altered by the 12th clause of the Proclamation of March 1823, which enacts that the evidence of slaves that have been baptised is to be received like that of any other Christian ?

Reply. I have always been of opinion that this clause did not alter the objections that the Roman Law interposes to the evidence of slaves, founded as they are upon the peculiar relation of master and slave. I still think that such evidence would be open to the "reproaches" that are allowed by Law ; those reproaches, however, do not by our practice exclude the evidence to which they apply, they only tend to diminish the degree of credit in the breast of the Judges, which, if irreproached, it would be entitled to receive.

Are persons convicted of crimes considered capable of giving testimony in a Court of Justice ?

Reply. Their evidence is received, but liable to reproaches, in the same manner as that of slaves.

Masters of slaves are allowed by the 13th article of the Batavian Statutes to inflict domestic correction on their slaves when they commit any fault, but are not allowed to handcuff them or put them in irons. Is this the existing state of the law upon this subject, and what do you conceive to be intended or meant by the term domestic correction ?

Reply. I take this to be the existing law upon the subject, and domestic correction is understood to be corporal punishment, and also includes the right of the master to confine his slave in the gaol for a certain period and to have him punished.

Is this species of correction limited to any certain number of stripes, or to be inflicted with any particular species of instrument ?

Reply. Upon this subject I must beg to refer you to the Proclamation of Sir J. Cradock, limiting the period of confinement of slaves by their masters to one month, and the Proclamation of the 23rd March limits the number of stripes to 25.

In looking at that clause of the Proclamation, I find that the domestic correction of slaves is only to be given with rods "or other implements of domestic punishment." What implements do you conceive are meant by that last expression ?

Reply. That expression certainly enlarges the description of instruments to be used in domestic correction, and does not define them.

Do you conceive that under this clause a slave may be corrected by the use of a sambok or a rope's end ?

Reply. I do not think that either are prohibited, and if a question was to arise respecting the propriety of the use of any instruments, it would be left to the discretion of the Judges.

I observed in the Country Districts ropes' ends said to be sealed with your seal and to have been transmitted by your order to the several gaols for the punishment of offenders. Did you sanction the use of these instruments, and in what particular cases ?

Reply. I do not recollect to have sanctioned the use of these instruments, and I can hardly conceive that such an occurrence would have escaped my memory, if it had taken place during the period of my service in the office of Fiscal.

Do you permit the use of ropes' ends in the punishments in the gaol at Cape Town ?

Reply. We do. The punishments are inflicted either with ropes' ends or rattans.

Which of the two do you conceive to be the most severe ?

Reply. It is difficult to say, for the one leaves contusions, the rattans inflict wounds in the flesh.

Are they generally inflicted on the bare body, and on what parts ?

Reply. The rattans are applied to the bare body, the ropes' ends are used upon the posteriors or back. The punishment is inflicted according to the option of the masters.

Is any person ordered to be present at the infliction of punishment ?

Reply. The first Under Sheriff is ordered by me to be constantly present upon these occasions, to prevent excess, and I have taken as much care as I could to cause this rule to be observed.

Is there any settled mode of punishing female slaves ?

Reply. They are not allowed to be punished with stripes. A short time after I entered upon my office they ceased to be punished on the bare back or shoulders. I had some correspondence with Sir J. Cradock upon the subject.

Is it usual to interrogate slaves, as well baptised as unbaptised, respecting their knowledge of the obligations of an oath ?

Reply. It is, or rather has been customary of late.

Do you think that the mere fact of baptism would be sufficient to justify the administration of an oath to a slave, without previous or other information of his knowledge of the sacred obligation that the oath imposes ?

Reply. The Court of Justice always requires, and even in the instance of a baptised slave would inquire what his knowledge was of the obligation of an oath.

Do you think that the same precaution is adopted towards the Mahommetans and Hottentots who may be summoned as witnesses ?

Reply. In cases where Mahommetans have been examined, the inquiry is left to the Mahommetan Priests, Hottentots who are neither Mahommetans nor Christians cannot be said to have any knowledge of an oath, and have not an idea of religion. The Mahommetan priests are only allowed to administer the oath, after which the enquiry is made by the Judge. The practice of allowing Mahommetan priests to administer oaths to the members of their religious congregations has only lately been introduced, and is by no means general ; such oaths are administered in the presence and under the authority of the Judge.

Returning again to the subject of punishments, is it considered that Hottentots under contract are subject to the same domestic punishments as slaves ?

Reply. No, they are not.

In what light are the Prize Negroes considered in the respect of punishment ?

Reply. The Prize Negroes, being considered and mentioned in the Act of Parliament as slaves, I have always thought that they were subject to the same regulations of Police as the slaves are. But I considered it right, previous to ordering their punishments, to send them to the Collector and Comptroller of the Customs to know whether they had any objection, considering these officers as jointly interested with the owners in the duties of management and protection.

Has any instance occurred in which these officers have objected to the punishment of a Prize Negro ?

Reply. I do not recollect any such instance.

Is hard labour at the tread-wheel now considered as a punishment that may be inflicted as well as flogging upon a slave or a Hottentot or Prize Negro, for the offence of desertion or vagrancy ?

Reply. I think that in the exercise of my discretion in awarding the punishment of all or any of the persons now mentioned, I might order labour at the tread wheel, instead of flogging, and I have so ordered. Vagrants who are taken up are also put to the tread-wheel. When that punishment was introduced I applied to the Governor for authority to make use of it in certain cases, and the authority was accordingly given.

Do you think that the Magistrates in the Districts are authorised to award the punishment of labour in the public streets to vagrant slaves and Hottentots, till they are otherwise disposed of ?

Reply. I see no reasonable objection to it, tho' I am not aware that it rests upon the authority of any special law.

Do you conceive that the free blacks committed to gaol for desertion from their contracted service or charged with misdemeanours or offences against the police, would be liable to be dealt with in the same manner ?

Reply. If a free black had no right of residence in the Colony and upon being taken up could give no good account of himself, he would be subject to punishment as a vagrant, and might be ordered to work until he was either sent out of the Colony or obtained my permission to remain in it.

Have you found that the punishment of the tread mill is effectual ?

Reply. It strikes me that it is.

Do you think that it is more or as effectual as flogging ?

Reply. I think that it depends much upon the character of the person upon whom it is inflicted.

What is the ground of distinction between public punishments and those inflicted within the walls of a gaol ?

Reply. By the Roman Law the condemnation of a person *judicio publico* for a public crime carries the consequence of infamy with it, and as all condemnations to punishment on the public scaffold are applied to offences of a public nature, it follows that the punishment has the consequence of infamy.

What are the legal consequences of punishment to which infamy is attached ?

Reply. The consequence of infamy was according to the Roman Law (and still remains) a lesser degree of credibility in giving testimony and in certain cases disability to complain of unlawful exheridation and to become heirs to the prejudice of near relations of the deceased, and further disability to serve Government in any honorable office or employment. The promulgation of the sentence likewise seems to be the criterion of the injurious consequences of infamy. If the sentence is pronounced only to the prisoner and prosecutor, it does not produce infamy, but when it is promulgated to the public as now it is in the Court of Justice, then the consequence of infamy follows.

Is flogging in prison (in itself a punishment) considered as attaching infamy to the person ?

Reply. I do not think it is. I should not consider that the punishment of an apprentice for a 2nd offence against the proclamation of 1818 carried infamy with it.

Has the punishment of transportation been always in use in this Colony, or is it of late introduction ?

Reply. It is of late introduction.

Do you conceive that the power given to the Landdrosts of awarding the punishment of banishment for a limited period is sufficiently defined in the 2nd article of the 1st section of the Regulations of the Crown Trial ?

Reply. I think that it should receive a more definite extent.

At the same time I think that any excess of authority by the Court of Landdrost and Heemraden is guarded against by the authority that is possessed by the Governor in moderating all sentences.

Do you find that the punishment of transportation to Robben Island and working there for certain periods is beneficial as far as it regards the persons concerned ?

Reply. I think it is.

Have you the same opinion of the punishment of working the convicts at the limeworks in Buckbay ?

Reply. I am not prepared to give an answer to the question.

Do you find that they frequently escape from the works at Buckbay ?

Reply. I am sorry to say that they do.

Is the station at Robben Island, and also that of Buckbay, under your order and control ?

Reply. I only send them to the station, but when once they are there, they are no longer under my control.

Under whose control are they placed ?

Reply. At Robben Island they are under the control of the Commandant, at Buckbay under that of the overseers.

Is any account transmitted to you of the labour of the convicts ?

Reply. It used formerly to be sent to me, it is now sent to the Government.

Have you the power of sending for a convict from Robben Island to the Tronk, and of releasing him from the former punishment ?

Reply. Generally speaking, the Fiscal has not authority to send for convicts or otherwise to dispose of them, but ever since I have been in the Colony it has been usual for the Fiscal to exercise it, and to send for the convicts who have conducted themselves well, and to appoint them to the situation of Caffre constables either in the Tronk at Cape Town or at other stations.

Do they consist generally of convicts who have been condemned to long sentences ?

Reply. Very often.

Are they employed as constables ?

Reply. Not in Cape Town, but in the other Districts they are.

Do you conceive that the practice is a salutary one ?

Reply. It is so far salutary that if I was not allowed to employ Caffre constables I should not know where to procure persons who would perform their duties.

What is the number of Caffre constables that is allowed to be employed in the prison ?

Reply. Ten.

By what regulations do you conceive that the appeal to the Governor in criminal cases is settled ?

Reply. By the Proclamation of the 10th June 1808, and by several articles in the 4th section of the Crown Trial.

In what light do you consider the 135th article of the Crown Trial ?

Reply. As describing principally the appellate jurisdiction of the Courts without particularising the nature of appealable cases, and it excludes all sentences passed by default.

In what manner do you interpret the 136th article of the same regulations ?

Reply. It defines the distinctions between cases that are not passed by default and that are or are not appealable.

Supposing that a person has been condemned upon his confession of a crime, and to appeal to the Governor against the extent of the punishment, is his right of appeal taken away by the paragraph ? (letter *a*)

Reply. He has no right of appeal I think in such case ; such was the old law and practice according to the ordinance of Philip the Second.

In what manner do you conceive that the paragraph (letter *b*) is to be understood ?

Reply. In the Dutch original, the sentences are made referable to those described in the preceding paragraph, the word *such* and the word *regularly* have been left out in the English Translation. I take the literal Translation of this section to be that a person shall not be regularly allowed to appeal upon incomplete confessions except in capital cases.

What is meant by the term incomplete confession ?

Reply. Confession is complete when it includes an acknowledgment of the fact as well as the criminal intention.

What do you understand by the word "regularly" that you say has been omitted in the translation ?

Reply. I understand by it that there may be exceptions to this rule, and these exceptions I conceive are provided for in the section marked *c*, where the Governor is declared to be empowered to give such legal orders and directions as the interests of justice and the welfare of the Colony may require.

Have you been always consulted by the Governor, or are you required to refer your opinion to him upon cases before he fixes his fiat to them ?

Reply. I am only consulted by the Governor in cases that are brought before him for Fiat from the Country Districts. The proceedings and the original sentences are usually sent to me from the Colonial Office.

Does the Governor frequently reduce or alter these sentences ?

Reply. He does, almost always in reducing the extent of the punishment.

Do you observe that a great inequality exists in the punishments awarded by the district magistrates for the same crime ?

Reply. I have frequently observed it.

Have you had occasion to observe great defects of form in the criminal proceedings that have taken place before the Landdrosts and Heemraden ?

Reply. Occasionally I have.

What proceeding is adopted in such cases ?

Reply. When the defects are very great or such as appear to render the condemnation null and void, I recommend the Governor to refer the case to the Court of Justice according to the 20th article of the Crown Trial.

Does the Court of Justice ever cancel the proceedings or order a new trial to be had ?

Reply. I believe that there is more than one instance of such proceedings.

Then a prisoner may be tried a second time for the same offence ?

Reply. Not so, for I do not consider that the first trial, if null and void for irregularities or defects of jurisdiction, to be a trial.

Do you consider that the punishment of transportation is

authorised by the Roman Law, the Dutch, or the Colonial Law ?

Reply. It is certainly authorised by the Roman Law, and as such I conceive is authorised by the Dutch Law.

Do you think that it was a punishment resorted to by the Dutch authorities in Holland ?

Reply. It was not, principally owing to the States not possessing Colonies to which they could banish convicts.

In what manner are punishments executed in this Colony ?

Reply. The usual place of execution of malefactors is at the foot of the Lion's Hill, persons condemned to be scourged are tied to a post, their hands fastened above their heads. They are scourged upon the back and shoulders. The executioner inflicts the first lash, and his servant five, the following lashes are given by convicts.

Is the number of lashes described in the sentence ?

Reply. No, it is not.

Then in whose discretion is it to limit or extend the number ?

Reply. It is in the discretion of the Fiscal, or the person who represents him. It is also partaken by the commissioned members and the Secretary of the Court of Justice, who are always present on such occasions.

In executions of capital sentences, is the Court of Justice or are the Commissioned members present ?

Reply. They are.

Are you required to be present also ?

Reply. I am.

Is there any particular form observed in executions ?

Reply. The prisoners are brought into the Court of Justice where the sentences are promulgated to them in the presence of the public. The bell of the Court is tolled, and the convicts are sent under a military escort to the place of execution. Two Commissioned Members and the Secretary of the Court attend at the place of execution, and the Fiscal follows them, all in carriages. If any capital punishments are to be executed a clergyman attends and prays for those about to suffer them, after which the executioner proceeds to perform his duty. The Court of Justice continues sitting and waits to receive the report of the Commissioner respecting the execution.

Are the bodies buried or given to the surgeons for dissection ?

Reply. They are buried, dissection of the body is not usual.

What is the capital punishment inflicted upon women ?

Reply. That of strangling.

Do you consider it to be as merciful a mode of punishment as that of hanging ?

Reply. It appears to me to be as quick.

Is a surgeon required to attend in cases of scourging ?

Reply. Generally it is so.

Are any other punishments inflicted than these ?

Reply. That of branding between the shoulders with a hot iron, which generally accompanies scourging in aggravated cases, exposure on a scaffold with a board affixed to the neck of the culprit describing his offence, and exposure under the gallows with a halter round his neck.

What is the usual punishment of forgery ?

Reply. According to the Roman Law the punishment would be deportation, but as the crime admits of great variety of degree, it may be considered that the punishment is discretionary. I consider that the forgery of the money coined by the State is punishable with death.

Has the forgery of the rixdollar notes forming the Colonial Currency ever been punished with death ?

Reply. Not to my knowledge.

Have such forgeries been frequent ?

Reply. Yes, they have, and are still so.

Do you find that the forgeries of them are easily detected ?

Reply. It is generally easy to detect the forgeries, but I have found it very difficult to detect the authors.

I find that in the Proclamation by which the Slave Registry has been established, no provision has been made either for making false returns or for mutilating or fraudulently altering them ; do you conceive that any law of the Colony exists by which such offences can be punished ?

Reply. These offences come within the description of "Crimen Falsi," and are liable to a discretionary punishment.

Do you find that the delay arising from the necessity of applying to the Governor for his Fiat to a Search Warrant before it can be executed is prejudicial to the interests of justice in the pursuit and discovery of crimes ?

Reply. I think that it may on some occasions.

Can a Search Warrant be issued on information that is not upon oath ?

Reply. The law does not require such information to be upon oath, after the authority of the Governor has been given, then the Fiscal applies to the Chief Justice, who appoints a commissioner or commissioners to assist in the execution. Some power to search in cases of suspicion of smuggling is granted to the Fiscals by their Instructions of the 2nd July 1785, article 40, this power is however modified by the instructions in article 82 of the Court of Justice by Mr. Commissary De Mist.

Is any power given by the Colonial or Roman Law to individuals to inform the Fiscal or Procurator General of breaches of revenue ?

Reply. Every individual has that power, and in many instances they are entitled to receive a share of the penalties and confiscations.

In proceeding to execute a Search Warrant, is the Commission authorised to break open an outer door of a house or a bureau locked up in a room ?

Reply. If it is necessary for the object of the search, the Commission may do both.

It is usual I observe to transmit orders from the Fiscal by his Dienaars verbally, are summonses to appear transmitted in the same manner ?

Reply. Summonses to appear before the Judge are always sent in writing, and the Messenger is also bound to give his official report in writing, but summonses from the Fiscal on subordinate occasions are not required by the Law to be sent in writing.

Does the Law require that the persons who are employed to convey the orders of the Fiscal should wear any distinguishing badge or dress ?

Reply. The undersheriff and constables are required to carry staffs of office with the King's arms upon them. This is a custom of very late introduction. The messengers wear a badge.

What is the distribution that prevails in the Fiscal's Department of the various duties that appertain to it ?

Reply. In my reply to this question I beg leave to refer to a letter addressed by me to the Colonial Secretary on the 15th August 1817. In a year after the appointment of Mr. Lind to the situation of Deputy Fiscal, he was named by His Excellency the Governor to perform the duty of agent and prosecutor for the Country Districts. He continues to perform that duty, but assists me also in taking preparatory informations and conducting proceedings before the Court of Justice. These duties fully occupy his time. Mr. Ryneveld attends to all affairs relating to the Police, and receives complaints and informations, and makes short memoranda of them. He also attends to the representations made by individuals respecting these complaints. He also superintends the registration of all acts that require to be registered in the Fiscal's Office. He attends to the execution of the laws respecting foreigners and the residence of persons in the Colony, as also of Hottentots, free blacks, slaves, coolies, boats, impounding of horses and cattle in as far as they regard the public police, the laws respecting eatables and drinkables, the assize of weights and measures. He is also bound to take measures of preventive police, to suppress all breaches of it, to remove public nuisances, and generally to maintain good order in the streets, markets, and public places and assemblies, public houses, the superintendance also of the apprehension of drunkards, vagrants, and other offenders. The internal police of the prisons and the control of all subordinate police officers and servants. The protection also of the Revenue against open violation appertaining to him. The superintendance of these duties belongs to myself, and I generally take a share in the performance of them. Communications with the Government upon all matters affecting its interests and latterly the duty of framing Proclamations, as also the prosecution of offences against Government that are brought before the Court of Justice, acting for Government in Civil cases, are the duties by which my time is chiefly occupied. I also keep up a considerable correspondence with the Landdrosts of the Districts, who refer to me for advice in criminal matters and generally in legal ones.

Do you think that correspondence with the Landdrosts upon such points might properly belong to their professional agent, the Deputy Fiscal ?

Reply. The agent is only employed for the prosecution of criminal affairs in Cape Town.

By whom is the business of police generally transacted ?

Reply. By Mr. Ryneveld, whose appointment specifically applied to that branch.

Had Mr. Ryneveld ever had the opportunity of acquiring any professional knowledge ?

Reply. He obtained a commission in the British army at the age of 18 or 19, and served till a very late period. He was deputy Landdrost of Caledon before he was appointed to the situation of Deputy Fiscal, and continued there for three years.

Does he go before the Commissioners of the Court to prosecute parties ?

Reply. Only in cases of more than ordinary importance.

Is that duty now performed by Mr. Auret ?

Reply. Principally it is.

Do you consider him to be competent to that duty ?

Reply. By continual practice Mr. Auret has acquired considerable knowledge of police business.

Does he translate declarations of witnesses on the Trials at which he assists, or documents appertaining to them ?

Reply. Mr. Auret does not act as Interpreter in the Court, he only translates documents in the Fiscal's Office, when it is necessary.

When the preliminary examinations are concluded before the Commissioner of the Court of Justice, is it necessary for the Prosecutor to obtain copies of them from the office of the Secretary and Registrar before he can proceed ?

Reply. The originals always remain in the office of the Secretary and Registrar of the Court, and as the Fiscal cannot proceed without them it is necessary that he should be provided with copies, which are sent to him by the secretary or his clerk.

Do you find that the term of eight days prescribed by the 33rd article of the regulations of the Crown Trial is sufficiently long to allow of its being generally adopted on all occasions ?

Reply. I have found in many instances that the period is too short.

Do you consider that the power that is given to the Fiscal, his deputies, and the Landdrosts of Districts to confine persons below the rank of burgher without a previous decree of apprehension, is derived from any written law anterior to the "Crown Trial," or that it rests upon the local usage ?

Reply. It rested partly on the constitution of the old East India Company's Government, and latterly upon more recent enactments contained in the District regulations and those adopted by the Court of Justice for their own proceedings.

Are you able to state the definition of the term of "burgher" in the sense in which it is used in the Crown Trial article ?

Reply. Every free person who is born in the Colony, has remained in it, and professes the Christian Religion is a native burgher.

Are British subjects as such entitled to the privileges of Burghers ?

Reply. I know of no legislative enactment that confers the privilege, but they enjoy it as soon as ever they have obtained permission to reside in it.

That permission is given I believe by the Governor alone ?

Reply. By the Governor alone.

Does the Fiscal possess the power of conferring or limiting this privilege to British subjects ?

Reply. He does not ; they present a memorial to His Excellency the Governor for permission to reside, which are sent to me to report upon, and if I see no objection they are generally granted.

Have you such means of knowing the objections that may be to the residence of a stranger, at so early a period after his arrival, as to enable you to furnish the Governor with correct information ?

Reply. I admit that my information must be very superficial upon these subjects.

Have you known many instances in which the permission of residence has been refused to British subjects ?

Reply. Latterly I think that such permissions have not been refused to those who produce securities for their good conduct, generally consisting of two inhabitants of the Colony.

Are these securities required from all persons who obtain permission to reside ?

Reply. It is optional with the Governor to require or dispense with it.

Is there any fixed amount for the security ?

Reply. No, there is not.

When a British subject has obtained a permission to reside in the Colony, is it necessary that he should obtain a pass from your office to enable him to proceed to any other District ?

Reply. It is not.

It is not permitted to any inhabitant of the Colony to change his domicile from one district to another without leave or permission of the Landdrost of the District ?

Reply. He must give proper notice to the Landdrost of the District that he quits, and a similar notice to the Landdrost of the District in which he is going to reside.

Would a stranger, who had obtained a Colonial Pass and travelling in the Colony, be liable to arrest if he had not his pass with him ?

Reply. He might be, and it would always be safer for persons in such a situation to be furnished with their passes.

What regulations exist relative to persons leaving the Colony ?

Reply. They must apply to the different offices for certificates that there is no objection to their departure from the Colony.

Is this applicable to all persons, or has it reference to the length of residence that the persons departing may have made in the Colony ?

Reply. It is applicable to all persons who obtain permission to reside in the Colony, but without reference to the period of their residence.

Do these rules apply to persons who are transient, or are passengers in vessels that touch here ?

Reply. No they do not, such persons stand in no need of permissions of residence.

When strangers arrive that are not British subjects, is it necessary that they should notify to your office the place of their residence ?

Reply. It is not necessary that they should notify it to my office, but they are required to do so to the Burgher

Senate, if they remain in town, and to the Landdrosts, if they intend to reside in the Country.

Does the Burgher Senate enjoy and exercise any powers of police ?

Reply. It does. It has the superintendance of the night watch, fire-engines, water conduits, repair of the streets, the assize of weights and measures, and the regulations of butchers and bakers. In the exercise of these powers, the Fiscal possesses, by right of usage, a control, altho' I am not aware of any single law that confers upon him a special authority or control, yet I think that it may be inferred from directions contained in other enactments.

Does there exist any code of regulations that may be called municipal, or such as appertain to the police of the town ?

Reply. I am not aware of the existence of any code of police regulations, but in the General Placaat dated 11th October 1740, there are several regulations relating to police affairs.

Was this Placaat issued in Batavia or at the Cape ?

Reply. At the Cape.

Is there any official copy of these Placaats in the Colony ?

Reply. There are two collections of Placaats, one in the Colonial Office and one in the Fiscal's Office, but neither of them complete.

Are the regulations of Police contained in these Placaats considered to be in existence or in force at this day ?

Reply. As far as they have not been repealed, or gone into disuse, they are in force.

Does the Burgher Senate hold any judicial sittings for the determining and punishment of breaches of police regulations ?

Reply. No, it does not.

Do you continue to issue instructions to the butchers previous to their setting out for the country districts for the purchase of cattle ?

Reply. The Instructions are issued by the Director of the shambles and sworn to before the Fiscal or his deputy.

Do you conceive that these regulations respecting butchers have been found beneficial in protecting the public against their demands ?

Reply. They tend to protect the sellers of cattle in their

dealings with the butchers' servants, who go up the Country to purchase cattle, and the butchers' bills that are issued in payment obtain circulation in the Districts without endorsement. I believe that the instructions for the butchers are found to be beneficial.

Have you the appointment of the under-sheriff and the Dienaars ?

Reply. I nominate or submit the names of such persons as appear to me to be fit for the situation of under sheriffs to the Governor, and he generally approves my nomination. The Deputy Fiscal appoints the Dienaars.

How many under-sheriffs are there ?

Reply. The principal and three others.

Has the number been increased of late ?

Reply. It was increased in the year 1818 by sanction of the governor, there were two only previous to that period, there are now four.

How many Dienaars are there ?

Reply. Twenty-eight.

From what class of persons are they generally selected ?

Reply. Many of them are discharged soldiers or sailors.

Do you experience much difficulty in obtaining proper persons for the situation of Dienaars ?

Reply. I do.

Will you be so good as to state in what manner the under sheriffs are employed ?

Reply. The first under-sheriff has the care of the prison and prisoners, and generally the superintendance of the gaol and the other under officers. He attends at executions, he keeps the prison books and pays a salary to a clerk to keep them. He supplies the provisions to the prisoners under the inspection of the Surgeon to the Court of Justice, who is bound to report to me every day the quality of the provisions and their quantity.

Have any complaints been made to you respecting the provisions of the gaol ?

Reply. Very few, and when they are made, they are immediately redressed.

Does the surgeon make that daily report to you mentioned in your last answer but one ?

Reply. He makes these reports to the Deputy Fiscal, who files them in his office.

What are the duties of the under-sheriff who is called the waggon-master ?

Reply. It is his duty to impress waggons that are required for the public and military service, within Cape Town.

Does he receive any salary for this duty ?

Reply. He receives 50 rixdollars per month, and is guided in his duty by a Proclamation of 26th August 1814.

The assistance of the Fiscal is required I believe in enforcing civil arrests ?

Reply. It is, whenever application is made, and in such cases I order an under-sheriff to attend.

Is that officer permitted to break open the outer door of a dwelling house ?

Reply. I do not think he is.

How far is a dienaar or other officer of justice warranted to break open an outer door of a dwelling house in search of a delinquent suspected of being in the house ?

Reply. He must have a decree of criminal apprehension to enable him to proceed, but he need not take it with him. If the delinquent were in his own house, I should order the officer to break it open if necessary to secure his person, but if he was in the house of another I should obtain a search warrant to enter the house.

What is the rule for arresting persons charged with debt, or disobedience of an order of Court ?

Reply. The rule now applicable to arrests issued at the commencement of suits is contained in the Proclamation dated 22nd May 1823, the rule by which civil arrests for debt at the end of a suit, termed in Dutch Gysiling, are now governed is contained in a proclamation of the Court of Justice dated the 9th May 1823 ; that part of the Proclamation that relates to the execution of sentences of ejection has been repealed by a Proclamation of the 13th September 1823, but that which relates to civil imprisonment for debt is still in force. It only applies however to the execution of sentences for payment of debts.

What is then the existing rule in the execution of sentences

of a Court by which a person is ordered to perform any particular act ?

Reply. The particular act to which a person is to be compelled by such sentence is called "præstatio facti," and it has always been usual when the Party condemned after sommation and renovation does not comply with the sentence, to make an application to the Court for a decree of civil imprisonment, which being granted, is again subject to the form of sommation and renovation ; as that practice was not repealed by the Proclamation of 29th May 1823, I refused in a late occurrence that took place last year to grant assistance to the imprisonment of a person named John Michael Enslin, on the ground that the sentence of imprisonment was no sommated and renovated. The advocate of the plaintiff complained of my refusal, and the point then came on to be discussed before the Court, who came to a resolution dated 26th July 1824, that in future when a peremptory term was given in the sentence for prestation of facts, it should not be requisite to give sommation and renovation, but when no peremptory term had been assigned in the sentence, that then the old practice should remain in force.

Does the law authorise the officers of Justice to enter the house of a person against whom a civil sentence has been given, and to arrest him ?

Reply. I do not think it does, and many instances are now existing in which persons against whom executions have been issued are not arrested, because they are not seen or found out of their houses.

Is this in consequence of any disposition of the Roman Law ?

Reply. It is. I conceive that arrests of the person can only be made in public places and streets.

Do you know whether this is in conformity to the practice in Holland ?

Reply. I certainly think it is.

Can arrests of the person of a debtor be made after sunset or on Sundays ?

Reply. I believe that there is no difference made in our law as to these periods.

Are any persons privileged from arrest ?

Reply. They are. Burghers and Inhabitants cannot be

arrested at the commencement of a suit, altho' they are liable to imprisonment for debt and under sentences for præstation of facts, officers in Civil and Military employments are privileged for as long as they are actually employed.

Cannot a creditor who suspects that his debtor is about to depart from the Colony oblige him either to remain or give security ?

Reply. An inhabitant who is "suspectus de fuga" may be arrested, and upon conformity to the rules of the Proclamation I before mentioned.

In cases mentioned in the 27th article of the Crown Trial, persons below the rank of Burgher may be imprisoned on suspicion of crime by the Fiscal or his Deputies, and the Landdrosts of the Districts, and it is ordered that a report of such imprisonment must be made to the Court in 24 hours afterwards, do you believe that this last regulation is strictly observed ?

Reply. This regulation in my opinion relates to cases described in the second section of the Crown Trial only, but I am not prepared to say that the regulation referred to in the question is observed, as in the Proceedings from the Country Districts I have never yet seen a Decree of apprehension given for this description of offenders.

In returning to the subject of punishments, I observe that a great many memorials that are presented to the Governor for the remission of sentences of slaves condemned to labour in irons are referred to you, as well as to the Court of Justice, for report, is it usual to acquiesce in them, and to allow the slaves to work for their masters under such circumstances at their own houses ?

Reply. The Governor very often allows slaves condemned to public punishment to work out their time at their masters' houses. It is considered a mitigation of the sentence, which the Governor under his instructions is authorised to make.

Do you think that this commutation of punishment is beneficial to the public interests ?

Reply. It is beneficial to the Masters, who cease to be deprived of the services of their slaves, but I do not think that in cases of a flagrant nature it is a practice that is to be recommended, and I have frequently advised against it.

Do you think that the masters of slaves would be induced to inform against them more frequently, or would be more willing to bring them forward, if some compensation was allowed for their estimated value when they were condemned to a long punishment that was likely to deprive them of the services of their slaves ?

Reply. If the estimated value did not reach that which the master put upon his slave, I do not think the plan would succeed.

Will you state in a brief manner what you consider the law of the Colony to be respecting the "Press," and whether the Government possesses a control over it ?

Reply. It was not until the year 1800 that any press existed in this Colony ; at that time Messrs. Walker and Robertson undertook to introduce a press, and in consequence of that a public notice was given by Sir G. Yonge, then Governor, that the *Gazette* that they were about to publish would contain all public notices and orders of Government, that it was the only press that Government allowed to exist, and denouncing a penalty of 1,000 rixdollars against all persons who should attempt to establish another. This Press having been taken over by the Government on certain terms from Messrs. Walker and Robertson, it became the property of Government and came into the hands of the Dutch Government in 1803, who appointed an Inspector of the Press (a Mr. Rynier de Clercq Dibbitz). He continued to be the sole Printer of the Government and the sole Printer of the Colony until the year 1806, when the British Government again resumed the press, and until the arrival of the Press introduced by Mr. Greig, I am not aware that any other press has existed. The inhabitants had long previous to this event been dissatisfied with the state of the press, and as far back as October 1779 a representation was addressed to the Directors of the East India Company in Holland, expressing amongst other things the inconvenience that was felt from the want of means of giving publication to the Laws, and requesting that the Governor's press might be established. From a reference that was made of the point to the Colonial Government it is probable that some disposition was made by the Directors, but I have not yet been able to ascertain the nature of it. Supposing

that a Press had been established at that time, I certainly think that it would have been subject to the restrictions of the Dutch Law, and that no paper or ephemeral publication would have been allowed to be printed, unless with the special permission and under such restrictions as the Government might have thought advisable.

Do you conceive that such was the state of the Law in the Netherlands at that time ?

Reply. I do, especially in the state of Holland, as will appear from a Resolution of the States of Holland of the 5th June 1744, to be found in the general collection of Dutch Placaats, vol. 7, folio 819, which law up to the year 1795 was in real and general observance.

What is the nature of the Placaat you allude to ?

Reply. That no paper or Publication under various denominations set forth in the Placaat and containing public information were allowed to be printed without a special permission of the States of Holland.

Does the Placaat contain any prescribed rules for the conduct of the Press ?

Reply. It does. For instance the Editors were required to abstain from giving any information that proceeded from foreign ministers or observations upon the Dutch or foreign Governments.

Are you aware of any legislative enactments issued by British or Dutch authority since the year 1795, that may have altered or modified the dispositions of this Placaat ?

Reply. None, except that of the year 1824, which requires the names of the Printers to be affixed to every publication.

Are you aware of any instance that occurred in the Courts of Holland in which the restrictions of the Press created by the Placaat before mentioned became a subject of contention or discussion ?

Reply. I am not aware of any instances in which the restrictions of the Placaat became the subject of judicial discussion, but I do recollect that the insertion of the opinions entertained by the Burgomasters of Haarlem in the Gazette that bears that name upon the subject of the farming the Public Revenue, that had at the time engaged much of the public attention, was severely animadverted upon by the

States of Holland, and the publication of the Gazette in which the observations were made was suspended. This I consider to have been an act of political authority solely.

Would offences against the regulation of the Placaat have been brought before a Court of Justice ?

Reply. I think that they would have been brought before a committee of delegates from the States of Holland, who would have exercised summary jurisdiction in the matter.

(Signed) D. DENYSSEN.

[Enclosure 5 in the above.]

Evidence given by SIR JOHN TRUTER, Chief Justice.

CAPE TOWN, 30th August 1825.

Do you hold your situation of President of the Court of Justice by Commission or letter of appointment ?

Reply. I hold it by letter of appointment from Sir John Cradock, dated August 1812, and it has since been confirmed by His Majesty's Secretary of State. The Title of my office is that of "Chief Justice." Before that time there was only a President of the Court.

Under what rules and regulations does the Court of Justice now proceed ?

Reply. The Instructions of Mr. De Mist, which were given to the Court of Justice established under his administration.

Do you know whether they had received the sanction of the Batavian Government ?

Reply. I believe not. They were not to my knowledge sent to Holland previous to the surrender of the Colony to the British Forces.

Do you conceive that they made much alteration in the constitution of the Court of Justice, as it stood previous to Mr. De Mist's commission to this Colony ?

Reply. I conceive that the Court of Justice received a different character at that time from what it had formerly possessed, by the introduction (as far as was possible) of professional Members from Holland. Their number consisted of six, which upon the establishment of the Court of Circuit was increased by Lord Caledon to eight.

Does the jurisdiction of the Court of Justice extend over the whole Colony, and over all causes except those that appertain to the Landdrost and Heemraden ?

Reply. It extends over the whole Colony with the exception stated, and over such causes it possesses an appellate jurisdiction either to itself or the Commission of Circuit.

Do you think that the Provisional Instructions of Mr. De Mist, under which the Court of Justice now acts, would have been confirmed by the Batavian Government, if time had been allowed previous to the surrender of the Colony ?

Reply. I have no doubt that they would.

Has the Court of Justice any jurisdiction over matrimonial causes ?

Reply. The Matrimonial Court possesses no jurisdiction beyond that of taking the ordinary declarations, and of endeavouring to adjust differences. Whenever a subject of litigation arises, it must be referred to the Court of Justice.

Do you conceive that the instructions of Mr. De Mist confer upon the Court of Justice a jurisdiction over questions arising out of the breach of the Colonial Regulations made for the protection of the Colonial Revenue ?

Reply. I conceive that it has that power under the sixth article of the regulations.

Under what regulations respecting the revenue would the Court now proceed in such cases ?

Reply. According to the rules promulgated by Commissioners Nederburgh and Frykenius, the proclamations of Lord Macartney, the Provisional Instructions of Mr. De Mist, and the regulations introduced at a later period by Lord Caledon.

This Jurisdiction of the Court of Justice has (I believe) been disputed by the Vice Admiralty Court ?

Reply. It has in some cases, and at present a mutual understanding prevails between myself and the Judge of the Court of Vice Admiralty that we should prevent any open conflict of our jurisdictions in these cases by private conference at the outset.

Has the Court of Justice ever taken cognizance of breaches of maritime law created by English Acts of Parliament ?

Reply. It has in cases of defective registry of ships, and breaches of the regulations of Trade, which the Officers of

Customs at the Cape are bound to enforce. It has taken cognizance likewise of breaches of the privilege of the East India Company.

Does the Court of Justice possess the power of enacting laws by which its constitution as well as its form of proceeding is altered ?

Reply. I do not think it does, without the sanction of the supreme legislative authority.

Did the regulations for the Crown Trial receive that sanction prior to their promulgation ?

Reply. It was always intended by myself, who drew them up, that they were to receive that sanction before they were published, but the evils in the criminal procedure that they professed to correct were of so pressing a nature that the Governor and the Chief Secretary resolved to publish them without waiting for the sanction of the British Government.

Do you conceive that the Court of Justice, as at present constituted, possesses any legislative functions ?

Reply. None whatever. It possesses however the power of framing rules for its own practice.

Do you find that the qualifications of the present Court are such as to fulfil the intentions of Mr. Commissary De Mist when he framed his regulations ?

Reply. I do not think they are. Not more than two of the Members are professional men.

Have you found that this circumstance has thrown additional weight of responsibility upon yourself ?

Reply. I have, and I have consequently been compelled to throw a greater weight of business upon the Secretary than the nature of his office would strictly admit.

Was this officer (Mr. Berrangé) educated professionally ?

Reply. He was.

By the regulations of Mr. De Mist, I observe that the President has the power of regulating the order in which proceedings are to be taken. Is that power exercised by you ?

Reply. The Court has its ordinary sessions, but I have the power of convoking them when any extraordinary business requires it, or whenever I consider it necessary for the ends of justice. I also exercise the power of determining the order in which the proceedings are to be taken.

Do you exercise the power of appointing a reporter of the proceedings, before they are brought up for sentence ?

Reply. In some cases I do, but the want of professional knowledge in the persons whom I could employ prevents me from having such frequent recourse to the office of reporter as I should otherwise do.

Is the mode of proceeding in civil cases similar to that which prevailed in Holland during the time of Mr. De Mist ?

Reply. It resembles the mode of proceeding that prevailed in Holland anterior to the year 1799, when new forms were introduced.

Are there any regular forms adopted by the practitioners for different actions ?

Reply. The citation, which is the commencement of an action, contains a technical description of the action that is to be brought. The conclusion likewise is technical, and conformable to the nature of the demand. All documents that are in support or in proof of the Declarations (*Eisch*) are filed with it.

Is any precise term fixed for the appearance of the Defendant ?

Reply. The citation fixes the day and hour on which the defendant is bound to appear, and the hour continues as long as the Session lasts. If the defendant does not appear, the plaintiff applies for the first default, and for a second citation. There may be also a third and fourth default. By each of these the defendant loses the advantages of all plea to the jurisdiction, of a dilatory plea, and a peremptory plea, and at the fourth the plaintiff is allowed to file his declaration which is called "*Intendit*" accompanied with the documents in support of it. If they are found sufficient, the Court gives judgment for the Plaintiff, and if he fails, he still gains his costs in which the defendant is condemned. This occurs in what are called ordinary cases. In liquid cases consisting of notes of hand and other liquid documents in proof of a debt, a copy always accompanies the first summons, with a notice to appear and acknowledge the handwriting, and if the party makes default, it is considered an acknowledgement of his handwriting, and the plaintiff obtains provisional judgment and execution, on condition of giving security *de restituendo*,

when he receives his money. At the same time if the defendant has a defence to the action, he is allowed to continue it in the same form as in the cases before described.

Does any inconvenience arise from the mode of taking evidence before the Commissioner or before a Notary ?

Reply. Notwithstanding the precautions that I have taken to prevent the mischief arising from the preparation of witnesses, I have not been able to check it as effectually as I could wish. The present mode of taking the depositions of witnesses before a notary is liable to much objection, and it is one of those points in which I think the practice ought to be changed. The witnesses ought to be heard before the Court that has to sit in judgment upon their declarations afterwards.

At what age is a witness considered admissible by the law ?

Reply. At the age of puberty, 14 in males and 12 in females.

Has the evidence of slaves been considered admissible in the Courts of the Colony in civil as well as in criminal matters ?

Reply. During my administration and even before it, the evidence of slaves has been always received, subject to the discretion of the Court as to its credibility.

Do you think that the clause of the Proclamation of the 18th March 1823 by which it is enacted that the evidence of a baptized slave shall be received in the same manner as that of any other person would supersede the objections that are termed "reproaches" ?

Reply. I do not think that the enactment carries the admissibility of a baptized slave's evidence further or gives it a greater degree of credit than it had before. It was always subject to "*reproach*" as being the evidence of a slave, and I conceive that it is so now.

What are the existing laws by which the Courts in the administration of justice are guided ?

Reply. In the first place, I should say that we at present follow the dispositions of the local law, or statutes, made by the Government from time to time, next those that were sent either from the Mother Country or from Batavia for the express purpose of being made obligatory in the Colony ; next the Dutch Common Law and principally that of the Province of Holland, comprehending the Roman Law which

is really incorporated with the Dutch Law but with some exceptions.

Is there any Collection of the Local Statutes of which you have spoken in your preceding answer ?

Reply. There are three collections of these statutes called "Placaats," one is in the Colonial Office, one in the office of the Secretary to the Court of Justice, and one in the Fiscal's Office. The best collection is that in the Colonial office. The other two are defective.

Are they of general application ?

Reply. Some of them are.

Do they regulate inheritances or affect much the real property of the inhabitants ?

Reply. They do not touch generally upon these subjects.

Is there any existing collection of the Laws that were sent from Holland for adoption in the Colony ?

Reply. I do not believe there is, the knowledge of them is obtained from books in which they happen to be entered.

Respecting the Batavian Statutes, what has been the rule of their admission into the Colony ?

Reply. In the year 1642 a general Placaat was issued at Batavia embracing not only the local Law, but also the Statute Law then in observance in India. This Placaat appears to have been intended for general observance throughout all the Territories of the India Company in India, but does not appear to have been generally adopted in this Colony until the year 1715 (M. P. de Chavonne being then Governor) when the Court of Justice was authorised by the then Governor and Council to consider these statutes as binding, in as far as they might be adapted to the existing state of the Colony. Occasional references to those Statutes are found in some Colonial Laws or placaats, but I have not been able to trace a formal and general introduction of them before 1715.

Is there any official copy of these Statutes in the Colony ?

Reply. There have been two, one in the Colonial Secretary's office and one in that of the Secretary of the Court of Justice, but I do not know what has become of them. I have a written copy of the Statutes myself, and there are copies containing more particulars, but not authentic.

Then it seems a matter of difficulty to determine what is authentic in the Batavian Statutes, and what is not ?

Reply. It is a matter of great difficulty.

Are they the subject of frequent reference in the Courts ?

Reply. Not now, I do not believe that amongst the practitioners they are much known, however in what regards slaves, they are still referred to.

Do you permit the practitioners to appeal to English Authorities in their pleadings ?

Reply. They do appeal to those authorities, but we do not consider them as law except in some commercial cases. The Dutch laws upon these subjects are rather antiquated, but it is considered by the commentators that reference may be made to the laws of other nations in deciding commercial questions. We are also influenced by the circumstance of the greatest part of the commercial questions that come before the Court having arisen between English Merchants or out of transactions that have taken place in England.

Is a reference to the Commissary Judges in civil cases a matter of course *ex debito justitiæ*, or does it depend upon the discretion of the Court ?

Reply. These references to the Commissaries for adjustment are enjoined by the spirit of the Dutch Law and prevail in all civil actions. The Court has the power of making the reference at any period of the suit, but in general it takes place after the declaration of the Plaintiff is filed and before the defendant puts in his answer.

Do you find that many suits are settled by this mode of reference ?

Reply. Many are settled. The Commissioner makes his report to the Court of Justice, and the submission of the parties to his recommendation being sanctioned by the Court, the parties are bound to abide by it. Orders of this kind are enforced as in other cases.

Do you find that these references are the causes of delay ?

Reply. There is nothing in the nature of the reference that of itself occasions delay, but the multiplicity of the causes so referred and the tardiness and variety of occupations of those who have to act in them have certainly led to delays. In urgent cases such as those in which Captains of ships may be

concerned, the Court on the reference being made frequently fixes a peremptory time to the Commissary for making his report.

No applications (I believe) can be made to the Court but through an advocate or a proctor on Court days ?

Reply. All formal applications must be made in this way, but those for an early consideration of cases are made to me personally, or to the Secretary of the Court of Justice.

What persons are competent to bring actions in the Colonial Courts ?

Reply. No persons can bring actions that are under 25 years of age, unless they have obtained a *venia ætatis* ; no married women without their husbands, or idiots and lunatics without their guardians, nor an insolvent debtor as far as regards his estate and property in the hands of the Sequestrator. But in other respects as far as regards his subsequent acquirement of property he may appear and sue in the Court.

Is it competent to an insolvent person to enter into contracts or to conduct his transactions before he is rehabilitated ?

Reply. He may do so, provided that they have no reference to the property given up or seized in consequence of his insolvency. A baker, for instance, who is insolvent may without rehabilitation and provided he can obtain assistance from his friends, set himself up in his trade, and he may maintain actions with reference to that trade and thereby protect his transactions in it.

Is the objection of alien enemy admitted in the Courts here against actions brought by such persons ?

Reply. Throughout the last war the objection was never made except in one instance that occurred in the sequestrator's office ; if the objection had been made, I think that it would have been admitted.

Are not certain individuals protected from civil actions, unless a *venia agendi* has been previously obtained by the plaintiff ?

Reply. By the Statutes of India this protection is accorded to the high officers of the Government, the members of the Court of Justice, and the clergy ; in practice it has been extended here to the Landdrost and Heemraden of Districts.

Is the application for a *venia agendi* made to the Court of Justice ?

Reply. It is.

Is it granted as a matter of right, or is it discretionary ?

Reply. I believe that it is a matter of right, but the memorial in which it is prayed for is referred to a Commissioner, who reports upon the nature of the action and also tries to adjust it.

Is a *venia agendi* requisite in actions brought against the persons you have mentioned in their individual capacity ?

Reply. It is.

Is the sequestrator entitled to the privilege ?

Reply. He is.

And the Fiscal also ?

Reply. In like manner.

Does it extend to the functionaries after the expiration of their services ?

Reply. It does, and indefinitely.

Can an action be brought in the Courts of the Colony against an absent person who has property in it ?

Reply. In such cases the Court proceeds by "Edict," which is made public, and which prescribes a time calculated to reach the absent party and calling upon him to appear.

Is it customary for English parties to exhibit in the proceedings the affidavits of debt that they are allowed by Act of Parliament to make before the Lord Mayor of London, and what efficacy is attributed by the Court to such documents ?

Reply. Such Documents are frequently produced in the Court, but they have no other efficacy than any other mercantile account upon which an action might be brought.

All claims forming the commencement of an action must be filed in the court at one of its sittings ?

Reply. They must.

To whom is the power given of regulating the admission of notaries to practice in the Colony ?

Reply. To the Governor, who refers the individuals to the Court of Justice for an examination of their qualifications.

Does the Court of Justice possess the power of admitting and rejecting advocates who have duly qualified themselves by study at the universities of Europe ?

Reply. A regularly educated person born in the Colony or having the right of residence in it and producing certificates of regular qualification in an university must be admitted to practise.

Is the examination of parties before the Matrimonial Courts previous to marriage conformable to the existing law of Holland ?

Reply. It is, but the Matrimonial Courts of Holland have a more extensive jurisdiction, empowering them to take cognizance of all matrimonial affairs, contracts, &c.

What is the age at which marriage may be contracted according to the Colonial Law ?

Reply. At 21 by males, and 18 by females. Previous to this period they must have the consent of their parents.

Can a clergyman of the Colony publish banns of marriage between two parties, without a certificate from the Matrimonial Court ?

Reply. He cannot.

Did the power of granting marriage licenses belong to the Governors of the Colony under the Dutch Government to the same extent that it is now exercised ?

Reply. Not to the same extent. The Dutch Governors authorized the publication of banns on the same day.

What is the general law or rule for the testamentary disposition of real property in the Colony ?

Reply. When a man is married in community of goods, his wife at his death is entitled to one half of the property, and the wife may during her life dispose by will of her half. The husband may in case he has four or less than five children dispose freely of two thirds of his property, and in case he has five or more children he may freely dispose of one half of it, the one third in the one case and the one half in the other being considered as the legitimate portion of the children.

Do the provisions of an antenuptial contract affect or disturb the legitimate portions of the children of the marriage ?

Reply. No, they do not. They only regulate the shares of the husband and wife.

Is there any difference in the law of inheritance of personal property ?

Reply. No, there is not.

Are the parents entitled to any, and what portion of their children's property?

Reply. They are entitled to one third of their children's property.

Does this take place when the children have children of their own?

Reply. No, it does not. In such case the whole property descends to them.

Are there any peculiar customs or usages in the Colony by which the inheritance of property is regulated?

Reply. We have a regular law of succession *ab intestato* that is adopted in the Orphan Chamber, but it is in most instances conformable to the dispositions of the Roman law.

What is the law of the Colony with regard to illegitimate children?

Reply. Illegitimate children succeed to the property of their mothers, but not to that of their fathers.

(Signed) J. A. TRUTER.

[Enclosure 7 in the above.]

Trial of John Carnall and W. Stillwell in 1824, for aiding the escape of William Edwards, a convict under sentence of transportation to New South Wales.

(Such a number of papers in connection with this case having already been given, I conceive it unnecessary to copy and publish the records of this trial.—G. M. T.)

[Enclosure 8 in the above.]

Judicial Proceedings before two Commissioners of the Court of Justice on the 12th and 18th November 1818 in the case of HIS MAJESTY'S FISCAL versus WILLIAM GRIBBLE, Ordnance Storekeeper. Seizure and Condemnation of Gunpowder, Clothing, and Stationery, the property of the Ordnance Department.

(I do not think it would be of any service to copy and publish this.—G. M. T.)

[Enclosure 9 in the above.]

CUSTOM HOUSE, 15th October 1818.

SIR,—I have the honor of reporting to you for His Excellency's information that the Merchant Brig *Hebe*, Daniel Stephenson, Master, has landed seven hundred barrels of gunpowder on the shore near Amsterdam Battery, without application to this office to be furnished with a permit for that purpose, and without permission from Government to land this powder duty free or to land it at all. In consequence of this violation of the laws of this colony, and of the public safety, I have considered it to be my duty as a Revenue Officer to make seizure of the brig and of the gunpowder in the usual form. I have &c.

(Signed) W. WILBERFORCE BIRD,
Comptroller of Customs.

Lieutenant Colonel C. Bird,
Colonial Secretary.

[Enclosure 10 in the above.]

COLONIAL OFFICE, 15th October 1818.

SIR,—I am directed by His Excellency the Governor to transmit to you herewith, for your information and guidance, a copy of a letter from the Comptroller of Customs, reporting that seven hundred barrels of gunpowder have been landed from on board the Merchant Brig *Hebe*, on the shore near the Amsterdam Battery, without application having been made to the Custom House for permission to that effect, and without permission having been obtained from Government to land this powder duty free, or to land it at all, and that in consequence of this violation of the laws of the colony, and of the public safety, he has thought it his duty to make seizure of the brig and of the gunpowder in the usual form. I have &c.

(Signed) C. BIRD.

D. Denyssen, Esq.,
His Majesty's Fiscal.

[Enclosure 11 in the above.]

CAPE TOWN, 29th August 1826.

SIR,—Adverting to a seizure that was made by you in the year 1818 of certain stores, the property of the Ordnance Department, we have the honor to request that you will inform us upon what footing the Ordnance and Naval stores are now imported, whether the regulations are considered to require that ammunition and arms should be sent from England under warrant from His Majesty signed by the Master General of the Ordnance, and if permits are applied for or fees paid by the Ordnance and Naval storekeepers previous to their being allowed to be embarked, or landed and lodged in the magazines.

We also request to be informed whether any application was addressed to your office, or to that of the collector, for such permits in the case of the stores that were seized in 1818, or whether any report was made at the Custom House of the arrival of the Ordnance stores in the *Hebe*, or of the intended shipment of those that were seized in the *Venus* consigned to Mauritius. We have &c.

(Signed) JOHN THOMAS BIGGE,
WM. M. G. COLEBROOKE,
W. BLAIR.

W. W. Bird, Esq.,
Comptroller of Customs.

[Enclosure 12 in the above.]

CUSTOM HOUSE, CAPE TOWN, 2nd September 1826.

GENTLEMEN,—The Ordnance and Naval Stores are, or ought to be imported, the former under a warrant of the Master General of Ordnance, to legalise the export from Great Britain, and neither can be landed free from Duty, without a written order to the Customs, under the authority of the Governor for the time being, accompanied by an Invoice from home attested by a competent authority. They never have been or can be legally landed without a permit, for the which payment has been ever made to the office, until of late,

when it has been remitted by Government in consequence of the Acting Officers here declaring that they had no account to which they could carry it, and consequently compelled to pay it from their own pocket, but for all remissions this office requires a special order from Government.

I know of no application being made for a permit in the cases to which you allude, but the documents are in the Court of Justice; the articles to the best of my recollection according to Custom House parlance were smuggled on shore; and in the case of the *Venus* resmuggled again on board, that is, they were landed and shipped in defiance and in contravention to those laws of the colony which the officers of customs are sworn to obey and by which this port has been hitherto guided and directed. I have &c.

(Signed) W. WILBERFORCE BIRD,
Comptroller of Customs.

His Majesty's Commissioners of Inquiry.

[Enclosure 13 in the above.]

Trial of J. P. C. Groenewald for having caused the death of his slave by severe ill-treatment.

(The accused was sentenced to three months' imprisonment and to pay the costs of the prosecution. The records of the case are lengthy, and I do not consider it necessary to publish them, as a similar trial has already been given.—G. M. T.)

[Enclosure 14 in the above.]

CAPE TOWN, 1st September 1823.

SIR,—In reference to a conversation I had the honor of holding with His Majesty's Commissioners last week, I now beg leave to lay the following statement before you for their information.

About two or three years ago, in the course of a correspondence carried on with some warmth with Mr. Meyer, then clerk in the Burgher Senate's Office, I charged him with some usurious practices. He thought proper to lay this accusa-

tion before the Court of Justice, and an enquiry was there commenced against me, in which I proved the following circumstance:—

That one of my friends, Mr. P. Visser, being in want of some ready money, had applied to this Mr. Meyer who had procured him the temporary loan of Rixdollars two thousand (2,000) upon his passing a bond of Rixdollars three thousand (3,000).

This Mr. Meyer stated in his vindication that he had been the mere agent of Mr. J. P. van Lier, the Town Treasurer, who had made the advance of the sum of Rixdollars two thousand (2,000) and had obtained a bond for Rixdollars three thousand (3,000) in his favor, and had threatened to sue the debtor before the Court of Justice for the latter amount.

These facts proved before the Court of Justice seem only to have been buried in oblivion there, since no proceedings were continued against me, nor such a prosecution instituted against such usurers as might tend to stop such nefarious practices, nor has the Court to this moment granted me the satisfaction either of acquitting me from the charge of having made any false accusation, or of punishing those persons who, by carrying on such a system, have added towards the ruin of this colony.

I beg leave therefore to request that an enquiry may be held into the merits of this case, which will fully appear in the records of the Court of Justice, or should that be insufficient to show the nature of this case in its proper light, I beg to refer His Majesty's Commissioners to the evidence which may be had of Mr. Jacob van Reenen, Jacobus' son, and Mr. I. Human, the parties who were induced to sign as securities for the payment of this bond, and who are perfectly acquainted with all the circumstances, and to the debtor Mr. P. Visser himself, who I understand has subsequently been called upon by Mr. J. P. van Lier and received from him his bond cancelled without even paying any part of that debt.

I have &c.

(Signed) J. SPENGLER.

To John Gregory, Esquire,
Secretary to His Majesty's Commissioners.

[Enclosure 15 in the above.]

*Record of the Judicial Proceedings in the case of Meyer
versus Spengler.*

(I do not think this need be given.—G. M. T.)

[Enclosure 16 in the above.]

FISCAL'S OFFICE, 13th November 1823.

GENTLEMEN,—I have the honor to acknowledge the receipt of your most honoured letter of the 22nd instant, covering a translated copy of the preparatory investigation of the case of J. N. Meyer, whereof information has been given on the 22nd June 1819 by J. J. Spengler, and requesting reply to the following two queries:—

First, whether any or what ulterior measures have been taken for the prosecution of Mr. J. P. van Lier and other persons concerned; Secondly, whether the Burgher Senate have been duly advised of the conduct of their treasurer, and if no such measures have been taken what may have been the reasons that induced the adoption of a contrary course of proceeding.

In dutiful compliance with your said request, I have the honor in answer to the first query herewith to transmit

(a.) Translation of a record held in the Court of Justice, showing that the obligatory bond for Rds. 2,000, alluded to in the judicial examination of Mr. J. Smit, has been produced in the Court on the 30th July 1819.

(b.) Translation of the obligatory bond for Rds. 2,000 passed on the 3rd July 1819 by J. P. Visser in favor of J. P. van Lier, which remained in the possession of Mr. M. J. Smit from the 3rd July, the date on which the same was passed, until the 30th July, when the same was produced by him in the Court of Justice.

(c.) Translation of the judicial examination of J. P. Visser, which took place on the 31st August 1819.

(d.) Translation of a notarial bond for Rds. 4,000, passed on the 8th July 1818 by J. P. Visser on behalf of J. N. Meyer.

(e.) Translation of what is called *de grossi* (the counterpart) of the aforesaid notarial bond which on the 15 September 1818 has been transferred by J. N. Meyer to J. P. van Lier, and on the 29th June 1819 has again been transferred by J. P. van Lier to J. N. Meyer.

(f) Translation of a notarial mortgage bond of slaves passed on the 14th December 1818 by J. P. Visser as a security for the payment of the bond of Rds. 4,000 at that time the property of J. P. van Lier.

(g.) Translation of the judicial examination of Carel Ziervogel, which took place on the 31st August 1819.

The contents of these documents I am confident will explain to you the object of my ulterior proceedings, and that the same continued until the 31st August 1819. I thus proceed to answer your 2nd query, which I am inclined to think is founded on the certain supposition that the criminality of Mr. J. P. van Lier's conduct has been proved by the evidence brought forward in the Court.

This, however, has according to my humble opinion been always subject to inextricable doubt, for however strong may be the suspicion thrown upon the conduct of Van Lier by the evidence of Spengler and Visser, no other persons but Meyer and Visser have been the ostensible parties to whose obnoxious transactions the charge of usury applies. It is proved that Meyer in his own name lent the money to Visser, and that although he on the 15th September 1818 transferred the bond for Rds. 4,000 passed on the 8th July 1818 to Van Lier, he on the 29th June 1819 did not scruple to allow Van Lier to retransfer the bond, and thereby to exonerate himself from the odium and responsibility of the complained of usurious transactions.

Not being able to prove that the charge of usury did apply to Van Lier, who never lent his name thereto, and never pretended any right of ownership to the bond of Rds. 2,000 produced in the Court on the 30th July 1819, the passing of which has been the means of settling between the parties concerned, although the same, without his known consent or concurrence was passed on his behalf, I thought it would have been preposterous officially to inform the Burgher Senate of my suspicions; still however I did not leave the Burgher

Senate ignorant thereof, but availed myself of the opportunity to communicate the same to the president, and most especially to inquire whether any monies entrusted to him in the capacity of treasurer had been ever misapplied to private purposes.

To these inquiries I received the most satisfactory information. The integrity of his conduct as treasurer was beyond all controversy, and I was told that even in a moment of pecuniary distress the treasurer had been assisted by his own means.

Such having been my informations, it remained for me to consider whether I should prosecute Meyer and Visser for usury. As the statutory laws of all the late united Netherlands are silent on this subject, and as the enactments of the civil law respecting the punishment of usury have been but tardily observed, I was induced to expect that in the case of my proceeding criminally in the Court against Meyer no ulterior punishment beyond the forfeiture of the bond would be awarded. Circumstances eventually so turned out, that without any condemnation of the Court, the bond for two thousand rixdollars, to which amount the usurious bond for Rds. 4,000 passed on the 8th July 1818, whereof not a farthing was recovered by Meyer, has been reduced, was also rendered unavailing to whoever may have had any right thereto, for subsequent to the passing thereof Visser became a bankrupt, and neither Meyer nor Van Lier, on whose behalf this bond for Rds. 2,000 was passed, as has already been observed, did report themselves in the Sequestrator's Office as creditors of the insolvent estate of Visser, as may appear from the authenticated list of Visser's creditors which I have the honor herewith to annex, and consequently lost all prospect of recovering the Rds. 2,000 supposing they had any claim for the recovery thereof, the right of creditors of insolvent estates being forfeited by their not reporting themselves in due time.

As my inquiries in this case were commencing under the impression that the defence to be set up by Visser in the civil lawsuit which was preparing against him for the recovery of the bond for rixdollars 4,000 might induce the Court of Justice to direct me to proceed criminally against the parties concerned, this I am confident will account for my not having from the commencement of my investigation brought any of

the parties to trial for the offence of usury, and I cannot but acknowledge that the eventual annihilation of the whole claim has afterwards occasioned me to lose sight of this among the many serious and important cases which from time to time have happened.

Before I conclude my reply I take the liberty to observe that this case may be still brought forward in the Court of Justice should this be deemed requisite, for that nothing happened to prevent my going on therein, the private agreement between the parties mentioned in J. M. Smit's evidence, whereof I received no other intimation whatever but what is contained in his said evidence, being entirely unconnected with the duties I have to perform.

I herewith return you the translated copy of the preparatory informations, and have the honor etc.

(Signed) D. DENYSSEN, Fiscal.

To His Majesty's Commissioners of Inquiry.

[Enclosure 17 in the above.]

CAPE TOWN, 31st May 1827.

SIR,—By your letter of the 21st instant I am honored with your request to be informed, 1^{mo}, “Whether the prosecutions for usury have been numerous in the Court of Justice since the period of my connection with it,” and 2nd, “Whether there exist any penalties or punishment for the practice of usury by the local laws or by those of Holland.” In answering those queries to the best of my ability, I am in the first place of opinion that there cannot be any doubt as to the signification of the word *usury*, especially not, as it in the English Law so completely agrees with that given to it in the Dutch Law. With respect to the 1st query, I declare I have not any knowledge of a single prosecution for usury having been carried on during all the time that I have filled any situation connected with the Court of Justice. And with regard to the 2nd, I have not met, either in the local or Dutch Law, any positive provision against usury, and as to the former I must even remark that one can merely deduce by way of argument the conclusion of its being criminal and punishable, the local law prescribing the interest which may be legally demanded, namely

six per cent on ordinary loans, as will appear by the 35th article of the Instructions for the Notaries Public, which rate is declared by Article 10 of the renewed Instructions for the Lombard Bank, dated 1st June 1808, to be *the legal Interest of the colony*, and we also find here and there in the colonial laws the title usury described in an improper light, as an illegal Act, among others in the Proclamation of the 14th December 1807, without however it being directly declared thereby to be criminal and punishable, or still less, any punishment prescribed against the same. In the mean time the colony is not without a law to be guided by. I allude to the 60th Article of the Ordinance of Philip of the year 1570 on Criminal Justice, which is still in force here, in which, among the number of different crimes, we find usury also mentioned, and which directs that it shall be punished *according to the written laws and placats if there be any*. Now as there are not any penalties prescribed by the Dutch law against the crime of usury, recourse has been had, by virtue of the aforesaid article of the ordinance quoted, to the written law, which conformably thereto, but more particularly on the grounds of the abovementioned Article, should also be observed in this colony. Following then the written law I find usury brought under the class of those crimes which are denominated in the Roman Law *Extraordinary Crimes*, that is such acts, as although forbidden by the laws, are not classed under any particular head or denomination of crimes, nor against which any fixed punishment is described by the law, and more especially to the crime of *Stellionaat*, which is punished in an extraordinary manner, Vide pi : & § 2. Leg : 2 ff Stellion : for which I conceive I must consider it as a matter beyond all doubt, that those who are guilty of usury commit a crime, which subjects them to a criminal prosecution, not liable however to any fixed punishment, but at the discretion of the Court, regulated according to the greater or lesser aggravating circumstances of the case, *ita tamen ut in utroque mode rationem non excedat* according to L : 13 ff : de pœnis.

It will be flattering to me should I have in any measure afforded you the information you desire. I have &c.

(Signed) D. F. BERRANGÉ.

John Thomas Bigge, Esquire.

[Enclosure 18 in the above.]

Trial of William Gebhard for the Murder of his Slave.

Records held before the Honorable Chief Justice, Sir John A. Truter, Knight, L.L.D., and the Worshipful the Court of Justice of the Settlement of the Cape of Good Hope, and the Dependencies thereof :

In the case of the Landdrost of Stellenbosch and Drakenstein, D. J. van Ryneveld, Prosecutor, on the part of the Crown, *versus* Wm. Gebhard, Prisoner, on a charge of excessive ill-treatment of the Slave Joris, a Native of Mozambique, of which Death was the consequence.

On Saturday, September 21st, 1822, commenced at nine o'clock in the forenoon, in the usual Court Room ; all the Members present except C. Matthiessen, Esq., on account of indisposition, and Messrs. Bentinck and Buisinne, by occupation, and the Secretary of the Court added to the number of the Members.

The Door of the Court Room having been opened, and J. J. Lind, L.L.D., in his capacity of Official Agent to the above-mentioned Landdrost, together with the above-named Prisoner, having appeared before the Court, the usual Prayers were read.

The said Agent then filed in Court :—

1. The Deed of Accusation, to which were annexed the preparatory informations.

2. A List of the Names of the Witnesses, as well for, as against the Prisoner.

3. The Deed of the Judicial Enquiries on the corpse of the slave Joris, and the Certificate of the Surgeon.

Said Deed of Accusation, Deed of Inquest, and Chirurgical Certificate, purported as follows :—

Deed of Accusation.

Whereas it has appeared to the Landdrost of the District of Stellenbosch, Requirant of the Court's Decree of Apprehension of the Person of you, William Gebhard, from the preparatory Informations collected by him ;

That on Tuesday the 10th instant, (September,) at about the

evening, you proceeded to the Vineyard belonging to the Estate denominated Simon's Valley, situate in the Ward called Groot Drakenstein, the property of your Father Johan W. L. Gebhard, where you had met with several Slaves belonging to the said J. W. L. Gebhard, and who were busy in turning the soil of the Vineyard with spades.

That David Heyder, Overseer in the service of the said J. W. L. Gebhard, on your arrival there, acquainted you that he had on that day punished one of the slaves, named Joris, a native of Mozambique, who was very slow in his work.

That you, thereupon, went to said Joris, of Mozambique, who was then still at work, together with the other slaves, and admonished him to be quicker in his work, which said Joris, on account of his weak corporal constitution, and on account of his not being accustomed to such work, could not perform according to your approbation; when you, on that account, caused him to be laid down on the ground, and taken hold of by four other slaves who were on the spot, and punished him with your own hand, with some bundles of branches of quince trees, repeatedly, or three times, on his bare body, and in an excessive manner.

That, not satisfied therewith, you had ordered some of the Slaves to bring said Joris to the Wine Store, in order to be there punished again.

That yet said Joris being, on account of the preceding punishment, unable to walk, he was supported by two of said Slaves, by taking him under their arms; and having, in such manner, advanced to half-way to the Wine Store, fell down on the ground, when he, the said Joris, expressed that he could not walk any further; wherefore the Slave November had taken him on his shoulders, and brought him to the Gate of the Farm-yard of the Dwelling House, and laid him down; his head having been supported by one of the Slaves during the time he was so carried off by said Slave November.

That although you had observed the weakness and weak situation of said Joris, yet you directed him to be dragged to the Wine Store, which was consequently effected by two of the Slaves, by your order, in compliance wherewith, said Joris was dragged to the Wine Store on his belly.

That then and there, and by candle-light, you caused him to

be laid down on the ground, and having been held fast by four Slaves, you directed him to be punished by the Slave November, with a piece of Bullock Harness, long about four feet, and about one inch thick, in a cruel manner, by applying on his bare body many stripes.

That as you could not satisfy your cruelty on said Slave, you had given directions to fetch bundles of branches of quince trees, in which mean time said Slave continued to lay on the ground; and when said bundles of quince branches were brought to you, said Slave Joris was again punished therewith, on his bare body, and in an excessive manner, by said November, in consequence of your directions, during which punishment, you threatened said November to punish him, should he not flog said Joris with force;—during which punishment, and by your order, salt and vinegar were brought to the spot, which you caused to be applied to the bleeding and chastised parts of the body of said Slave, by large quantities, on which parts you caused him to be flogged with the quince branches repeatedly, so that said Slave remained senseless on the ground, when you poured vinegar in his mouth; and he was, at last, in a state of senselessness, carried off by one of the Slaves, and laid in a bed. The consequence of which cruel ill-treatment was, that the said Slave, Joris, of Mozambique, died the next morning, at about eight o'clock.

And if, upon an enquiry into this cause, the whole of the Premises may prove to be the truth, you, William Gebhard, will be judged guilty of cruel ill-treatment of the Slave Joris of Mozambique, of which the death of said slave was the consequence; which crime, the dignity and respectability of His Majesty's Government, and of Impartial Justice, require to be punished according to Law.

Fiscal's Office, 18th September, 1822.

(Signed) J. J. LIND, Deputy Fiscal.

Deed of Inquest.

On this day, September 12th, 1822, at four o'clock in the afternoon, the undersigned Christopher Jacobus Briers and William Wium, deputed Heemraden, duly assisted by the

Head Clerk of the District Secretary's Office, Johan Godfried Gabriel Lindenberg, (the Secretary being absent on duty,) and the District Surgeon, Robert Shand, at the instance and in the presence of the Landdrost, Daniel Johannes van Rynveld, Esq. and in consequence of an information lodged with him by Bastiaan, a native of this Colony, and slave of the Rev. Mr. Johan Wilhelm Ludwich Gebhard, and purporting,

“That his fellow-slave, named Joris, having on the day before yesterday been punished by the overseer, Daniel Heyder, and having subsequently been punished repeatedly by order of William Gebhard, son of said Gebhard, had departed this life yesterday,”

Repaired to the estate denominated Simon's Valley, situate in the ward called Groot Drakenstein, within this district, belonging to the said Rev. Mr. Gebhard, and then and there inspected the corpse of a male, which said Rev. Mr. Gebhard, who was present at the inspection, declared to be the corpse of one of his slaves, named Joris, (or George), native of Mozambique, about 45 years of age; and the corpse having then been entirely stripped, we found as follows:—

(a) That on the back part of the body, from the neck to the lower extremity of both buttocks, marks of a punishment were visible, consisting of stripes, some of which were deprived of the upper skin.

(b) That the skin of the left knee was off.

(c) The head having afterwards been opened by the Surgeon, and carefully examined, nothing was observed that could have caused the death of said Joris.

(d) The body having also been opened and carefully examined, nothing was then observed, which, (according to the declaration of said Surgeon,) could have caused the death, except a slight reddish hue at one of the small entrails, which said Surgeon, however, positively declared, could not have contributed to the death, and to be of little importance; as also, that the stomach was filled with a quantity of water, mixed with mucus, which said Surgeon declared to be of a sourish smell.

(e) That the hinder parts having afterwards been opened and carefully examined, it appeared that the whole of the hinder part of the body, from the neck to the lower part of

both buttocks, and particularly in the loins, kidneys, and under the ribs, were violently contused and covered with thickened and fluent blood, bearing marks of a violent punishment.

And the above-named Surgeon thereupon declared, that no other cause of his death could be discovered on said corpse, but the punishments which were applied.

Finally, a rope with which said slave Joris was punished, was produced to the undersigned, consisting of a twisted piece of hide, of about an inch thick and 4 feet long; the one end thereof was stained with blood.

Of all which the present deed was made out.

Thus done at the aforesaid Estate, year and day first above written.

In my presence,

(Signed) J. G. G. LINDENBERG, Head Clerk.

As Commissioners,

(Signed) C. J. Briers,
W. Wium.

Chirurgical Certificate.

This is to certify, that I, this day, proceeded with a Commission to the Place of the Rev. Mr. Gebhard, to examine the body of the slave boy Joris, and found, viz. :—

Internal Examination.

On opening the head, and on examination of the brain and membranes, with the exception of a small quantity of water in the ventricles, no marks of disease or derangement of structure were observable.

On examining the thorax, or chest, the same appearance of healthy structure was observable; nothing the least characteristic of disease was seen.

The viscera, or bowels of the abdomen, (or belly,) were equally healthy in appearance, with the solitary exception of a slightly reddish hue, (of about 3 inches long,) in one of the convolutions of one of the small intestines, (the ileum), but of

no immediate consequence ; the stomach was perfectly healthy, a little distended, and contained a quantity of fluid, rather clear and colourless, mixed with mucus, (slime,) and of a sour or vinous smell.

External Examination.

On examining the posterior part of the body, a very different scene presented itself : the loins were one complete mass of extravasated blood, coagulated lymph, and bruized muscular substance. So bruized were the lumbar and dorsal muscles, that their fibres could not, in many parts, be distinctly traced. This extravasation of blood and effusion of lymph, evidently the consequence of violent contusion, extended from the bottom of the hips to the pyramidal muscles of the neck, and on each side, as far as the external oblique muscles of the abdomen, or belly ; extensive flakes of coagulated blood were also laying under the different fuscias. In fact, the whole fleshy and cellular substance of the loins exhibiting the complete heterogeneous mass of coagulated blood, effused lymph, and bruized muscular substance.

After the most minute and careful (internal) examination of the body, no marks of disease or derangement of structure, were discovered, capable of occasioning death. The unavoidable and irresistible inference naturally is, that the slave in question owed his death to the destruction of parts discovered on dissection, (in the loins and neighbouring parts,) producing so much constitutional weakness, exhaustion and pain, as gradually to paralyze the action of the heart, and speedily to lead to complete extinction of life.

(Signed) ROBERT SHAND, M.D., District Surgeon.

The Prosecutor finally filed the interrogatories to be put to the Prisoner ;

Whereupon the aforesaid Deed of Accusation was loudly read by the Secretary.

After which, the Honorable Chief Justice acquainted the Prisoner, that the interrogatories produced in Court will be put to him by the Secretary, concerning the circumstances set forth in the Deed of Accusation ; as also such queries as the

Court themselves may judge expedient to put to him, which interrogatories were then put to him, and to which he replied as noted down in the margin of the same.

Examination of the Prisoner.

What is your Name? Where were you born? Of what age are you? Where do you live? and, What is your employment?

Answer. John Wilhelm Louis Gebhard, twenty-one years of age, born in London, living with my father, on his estate denominated Simon's Valley, Overseer of that Estate.

Must not you acknowledge that you are guilty of cruel ill-treatment committed on the Slave Joris, belonging to your father, to such a degree and in such manner as mentioned in the Deed of Accusation just now read to you?

Answer. No!

On account of which denial, the Court resolved to proceed, according to Article 49 of the Regulations for Criminal Trials, to the examination of the Witnesses, and those who were examined on the preparatory Informations, as well as those named by the Prisoner; to wit:—in the first place, the Witnesses on behalf of the Prosecutor, who having successively appeared before the Court, they have made the under-mentioned Depositions in the presence of the Prisoner.

Witnesses of the Prosecutor.

1st. David Heyder, who having been made acquainted with the reasons why he was called upon, and having made oath according to the regulations, declared,

That he is 56 years of age, born in Germany, servant, and living on the estate of Johan Wilhelm Louis Gebhard; and he stated further as follows:—

On Tuesday, in last week, at 7 o'clock in the morning, I was in the vineyard of said estate, together with the men, amongst whom was Joris, a native of Mozambique, in order to turn the soil in the vineyard with spades. Joris refused to do his work in the same manner as the other men, was disobedient, and would not do what I directed him; I then took a twig of a

quince tree, and gave him about eight stripes on his back, on his waistcoat, when he clapped his hands together and laughed at me. I then directed him to be laid down on the ground, and his small clothes stripped down, when I gave him about ten stripes with two quince-tree twigs on his bare buttocks, in order to frighten him; but it had no effect with him, and he did his work as before, which I did not mind: at about sunset the son of old Mr. Gebhard, (now the Prisoner,) came in the vineyard just at the moment I was about to go to the dwelling house, and therefore I did not talk to him, but made a salute with my head.

The Prosecutor asked the Witness,—

When the Prisoner came in the vineyard, did not you then tell him that you had punished the slave Joris?

Answer. No; it was my time to go home, and I therefore stopped no longer.

Advocate Cloete, for the Prisoner, asked the Witness,—

Was the slave Joris not a stout and capable workman?

Answer. No; always lazy, stupid, and unhandy.

Did the slave Joris, on Tuesday morning, not appear to you to be in sufficient health, as to be able to do his work properly?

Answer. Yes; but yet he did not do so.

Do not you know, that Joris had repeatedly, when warned to do his work, pretended to be unwell?

Answer. Yes.

Do not you recollect a particular instance of it?

Answer. I know that he had twice made a pretext as if he was sick.

In what manner did the Prisoner always behave himself toward the slaves on the estate?

Answer. To the best of my knowledge, properly, friendly, and reasonably towards every man.

2nd. Bastiaan, who having been made acquainted with the reason why he was called upon, and having promised that he would state nothing but the truth, said,

That he was a native of this colony, (guessed to be 50 years of age,) and that he is a slave of Johan Willem L. Gebhard; and he further deposed as follows:—

On Tuesday of last week, I, together with the other men on the estate, amongst whom was Joris, were in the vineyard, in order to turn the soil with spades, under the superintendence of the old Master, David. As Joris could not do his work equally with the other men, the old Master caused him to be laid down on the ground, and gave him about fifteen stripes with quince-tree sticks, on the bare buttocks, whereupon he went to his work again; but he again remained behind the others, whereupon the old Master called me, together with Geduld and a boy, and directed me and Geduld to hold said Joris, each of us by one hand, and whilst he was so standing had beaten him with a quince-tree stick, on his shirt, on his back, but I did not count the stripes; whereupon Joris went again to his work with the spade. At sun-set, the young master, (pointing at the Prisoner) came on horseback in the vineyard, and having dismounted his horse, and having directed me to give it a walk, I did so, and went with the horse out of the vineyard to the orchard; the young master then went to Joris, and placed himself behind him, and admonished him to do his work, but he could not work equally with the other men; thereupon the young master directed him to be laid down upon the ground, but I was at such a distance from the spot, that I could only see that the young master lifted his hand up, and was beating; Joris then went to his work again, and continued therewith until it was dark, when the young master took the horse from me, and went off; as Joris could not walk, Geduld and November supported him, and went with him to the other estate; a little boy, I believe, little Dampie, went and told the young master that Joris could no longer walk. I was sitting to eat in the slaves' quarters, when the Slave May came and told me that I must go to Joris in order to assist him, which I consequently did, when I found him lying at the gate of the Farmyard; I lifted him up to make him go, but he said he could not, and laid himself down again; the young master came there, and asked me whether he could not rise, to which he replied, No! Whereupon the young master expressed, if he refuses to go, drag him then to the Wine Store. Geduld, November, and I myself, then took him at his arms, and so dragged him to the Wine Store, on his belly. In the Wine Store he was stretched out on the ground, by order of the

young master, and was beaten by November, on his bare buttocks, with a piece of twisted horse harness, made of a piece of hide, thick about an inch; he so received one hundred and thirty-nine stripes, which I counted myself; thereupon, November, also by order of the young master, washed the buttocks of Joris with vinegar and salt; and beat him again on his buttocks with said piece of harness; January and Jan were then sent by the young master, to fetch twigs of quince. In the mean time flogging was discontinued, but Joris continued to lay on the ground; they brought a bundle of quince-tree twigs, with which, but only with one at a time, and when the one was broken, then with another one, November had flogged the Slave Joris on the bare back, by order of the young master; but I do not know how many stripes he had given him with these twigs, because I did not count them; after this flogging he could not rise, and could also not lift up his trousers, and make them fast, which was then done by me, with the assistance, I believe, of November, Geduld, and little Dampie; after which, Jan, by order of the young master, carried Joris to the slaves' quarters, and laid him down on his bed; soon on the next morning I rose, and called at him, but received no answer, and I thought he was sleeping; I touched his body to awake him, but he was quiet; I laid my hand on his heart, which still was in motion; I then, jointly with the other people, went to the other estate, in order to dig the vineyard, as on the preceding days. On my passing by the dwelling house, I told the house servant, Mentor, to mention to his master that Joris could not rise, and then went to my work; at about eight o'clock on that morning the old master, David, came in the vineyard, and told us that Joris was dead!

The Prosecutor asked the Witness,—How many times was Joris punished in the vineyard?

Answer. The old man, (denoting, as he said, old Master David,) had beat him two times, and the young master, three times afterwards.

Were the punishments applied by the young master three times on Joris, at each time so applied, on his bare body?

Answer. I was behind a bush, and could only see that he was stretched out on the ground.

Did you also see, that the old master talked with your young master, when, at sunset, the latter came in the vineyard ?

Answer. No ! I was too far off.

A piece of twisted horse harness, made of a piece of hide, about one inch thick, being exhibited to the Witness, he was asked, Whether he does or does not recognize the same to be the instrument with which he had stated that November had beaten the Slave Joris, in the Wine Store ?

Answer. The Witness declares, the end of harness exhibited to him to be the same instrument with which the Slave Joris was beaten in the Wine Store, by November.

Advocate Cloete, for the Prisoner, asked the Witness, Have you not made yourself repeatedly guilty of desertion ?

Answer. Yes ! but it is very long ago.

Did not you lodge complaints of ill-treatment with the late Landdrost of Stellenbosch, Mr. Andringa ?

Answer. Yes.

Were you not punished on account of the falsehood of your complaint ?

Answer. Yes !

The above Deposition, Queries, and Replies having been read to the Witness, he persisted in the same.

The Witness having been sent off, was called back, at the particular request of Advocate Cloete, in order to put a couple of questions more to him.

Advocate Cloete asked the Witness,—Did you and Geduld carry the slave Joris from the vineyard to the farmyard ?

Answer. Not me, but November.

Did you not leave the Estate, in order to inform what had taken place with Joris ?

Answer. I merely went to Stellenbosch, in order to state the case.

3rd. Geduld, who having been made acquainted with the reason why he was called upon, and having promised that he will declare nothing but the truth, said,

That he was born in the colony, (guessed to be 35 years of age,) and that he is a slave of Johan Wilhelm L. Gebhard, and he further declared as follows :—

On Tuesday morning, I believe it was, last week, I was in the vineyard soon in the morning, in order to turn the soil with the spade; Joris and the other people were there also. At about 9 o'clock in the same morning, old Master Heyder came also in the vineyard, and had given the men wine to drink; and afterwards he caused Joris to be laid hold of, and to be held fast by two men, each at one arm, and had beaten him with a quince twig, on the back, on his clothes, and when so standing upright, I believe he had given him ten stripes. Joris then went to his work again. At about noon, the old Master caused Joris to be stretched out on the ground, his trousers to be stripped down, and punished him with a bundle of quince twigs on the bare buttocks; I believe he gave him then fifteen stripes, upon which he continued his work with the spade again. On the same day, at about sunset, the young Master, (pointing to the Prisoner) came in the vineyard, when old Master Heyder talked with him, but I do not know what they talked, because I was afar off from them; but the young Master immediately gave Joris a stripe with a quince tree twig on the back, in his clothes, and told him he must be quicker in his work; but he could not do it, and the young Master then directed him to be stretched out on the ground, and flogged him with quince twigs on his bare buttocks; but I do not know how many stripes he had given him, because I did not count them. Joris then repeated his work with the spade, and because he could not do it quickly, the young Master caused him to be again stretched out on the ground, and punished him once more with quince twigs on his bare buttocks; but I do not know the number of stripes, because I did not count them; and after this punishment, Joris was directed to do his work again, and finish the row; but he said he was fatigued, and the young Master insisted upon his finishing it, which he consequently did; and when he had finished it, the young Master went off on horseback, and left orders to bring Joris to the wine store. He went from the vineyard to the gate, he could not come further; and then I and November took him under the arm and carried him half way, from whence we dispatched little Dampie to the young Master, in order to tell him that Joris could walk no further, and that he was too heavy to be managed, and that the young Master must send more hands to assist us. But as the men did not come

for a long while, I, at the proposal of November, lifted the slave Joris up and laid him on the shoulder of November, who carried him so far as the gate of the farmyard, there he laid him down, and we met there with the other men. Young Master came also up to us on horseback, and gave directions to bring him to the wine store, and which was effected by Bastiaan, Toetje, and Jan. The young Master came also in the wine store, and caused the trousers of Joris to be stripped down, and caused him to be beaten by November, on his bare buttocks with an end of a horse harness made of a piece of hide twisted, of about an inch thick; but I do not know how many stripes he received. The young Master had then sent for vinegar and salt, and caused it to be applied on the parts so beaten upon by November, and caused him to be flogged again with the same piece of harness. The young Master had afterwards sent the slave Tom to fetch quince twigs, who consequently brought some. In the meantime that the quince twigs were fetching, Joris remained laying on the ground. Afterwards the young Master caused Joris to be flogged, but not with the whole bundle of quince twigs at the same time; but when the one was broken then with another; but I do not know how many stripes he received in this manner. The young Master then caused vinegar to be drawn, and has poured a quantity of it in his throat, I believe as much as three calbas cups full. Joris could not lay on one side, and particularly not sit up. When we attempted to let him sit, he fell down. The young Master having given wine to drink to Bastiaan and Jan, I had lent a hand to lay Joris on the shoulders of Jan, who carried him to the slaves' quarters. The young Master and we afterwards left the wine store, the other slaves went to the quarters of the male slaves, and I went to the quarters of the female slaves, where I am in the habit of sleeping. Soon in the next morning, I went to see Joris, but having called at him, I received no answer, which I then mentioned to the young Master, who then sent me to tell January that he must apply something to Joris, and bring him his rations of bread; but January was already gone to his work, and I therefore dispatched little Dampie to call him back, and communicated to him the orders of the young Master. Thereupon I returned to the small estate, where at about 8 o'clock arrived the old Master Heyder, who

called me aside, and asked me whether Joris had received many stripes, to which I replied in the affirmative, adding that vinegar was given him to drink; and the old Master then told me that Joris was already dead.

The Prosecutor asked the Witness, Did you also see that Joris laughed at the old Master, Heyder, in the vineyard, and had clapped his hands subsequent to his having punished him?

Answer. No; he asked pardon of the old Master, expressing he could not work. The old Master did not comprehend him, and employed me as an interpreter, to ask him why he had rubbed his hands together, to which Joris replied, he had done so because he could not work.

When your young Master directed Joris to be brought to the wine store, did he then also add why this was to be done?

Answer. My young Master said, because he could not handle the spade as quickly as the other men.

In what manner was Joris brought from the gate of the yard to the wine store?

Answer. My young Master directed him to be dragged; but as it was already dark, I do not know whether the whole, or only part of his body, touched the ground when he was dragged.

How long did the punishment in the wine store continue?

Answer. We arrived at the wine store at about 7 o'clock, and we left it at about 9 o'clock. The Mistress of the house was then already asleep.

At what distance is the vineyard from the dwelling house?

Answer. I believe at a distance of half an hour, on foot, from the large estate.

Do you also know that Joris made a pretext to his Master as if he was sick?

Answer. This I cannot tell; but from the time he came on the premises, he could not work equally with us.

Would you be able to recognise the rope's end with which Joris was beaten in the wine store, if exhibited to you?

Answer. Yes.

And the same having been exhibited to the Witness, he recognised it.

Advocate Cloete, for the Prisoner, asked the Witness, Are you of opinion that Joris could not walk in consequence of the punishment he received in the vineyard, had he been willing to walk ?

Answer. To this I cannot answer ; but when I asked him why he did not walk, he replied to me that his legs were lame.

Did Joris, when he was carried homeward, complain of pain occasioned by the punishments ?

Answer. No.

Did you count the stripes which Joris received in the wine store with the rope's end ?

Answer. No ; but to the best of my knowledge I believe that Joris received, with the rope's end and the twigs together, upwards of one hundred stripes in the wine store. November stepped over his body about five times, in order to beat him.

Was Joris not a stout and strong man ?

Answer. Stout of stature, but weak in his work.

Did Joris not complain repeatedly that the usual rations of provisions were insufficient for him ; and did he not since get double rations ?

Answer. Yes ; he always got more than we.

Did your young Master, now the Prisoner, on Tuesday evening, when the work of the day was finished in the vineyard, not express, let Joris not remain behind ; but not to bring him to the wine store ?

Answer. The young Master directed him to be brought to the wine store ?

The deposition of the Witness, together with the questions put to him, and his replies thereto, having been read to him, he declared to persist in the same.

4th. Dampie, who having been made acquainted with the reasons why he was called upon, and having promised that he would tell nothing but the truth, said, that his name was Little Dampie, a native of this Settlement, fifteen to sixteen years of age, a slave of old Gebhard ; and he further deposed and declared as follows, viz :—

On a certain day, which I do not recollect, I was jointly with the other workmen, amongst whom was one named Joris,

in the vineyard, to turn the soil with spades. At about 8 o'clock old Master Heyder came there to inspect the work, and as Joris could not do as much as we did, because he was too weak, the old Master punished him with a bundle of twigs of the quince tree, on the bare buttocks, having previously caused him to be laid down on the ground; but how many stripes he did give him I do not know, for I cannot count. At about sunset of the same day, the young Master (pointing to the Prisoner), came in the vineyard, and caused Joris to be laid down on the ground, and flogged him with a bundle of twigs of quince, as aforesaid, on his bare buttocks. I do not know how many stripes he gave him, but many. He then went to his work again. Afterwards, my young Master again caused him to be laid down on the ground, and flogged him with twigs on the bare buttocks; the number whereof also I cannot tell. He afterwards went again to his work, and then the young Master again caused him to be laid down on the ground, and flogged him again with twigs on his bare buttocks; after which, the young Master left the vineyard, leaving directions to bring Joris to the wine store. November and Geduld supported him in going thither: but at half way Geduld had sent me to the young Master, in order to tell him that Joris could not walk, which I consequently did; and my young Master then directed me to call three men more to assist the others. Toetje, Bastiaan, and Jan, went thither, and met with Joris, Geduld, and November, at the gate, from which spot they dragged him to the wine store with his back-side on the ground.

In the wine store he was laid down on the ground, by order of the young Master, and was beaten by November on his bare buttocks with a rope's end of an inch thick. He received many stripes, but I do not know how many. Subsequently my young Master has sent for vinegar and salt, and caused it to be applied on the beaten parts by November, and then caused to beat on them again; after which my young Master dispatched Tom to fetch a bundle of twigs of the quince tree, who consequently went and brought the twigs, in which intermediate time no flogging did take place, and Joris continued lying on the ground. But when the twigs were brought, Joris was flogged by November with the twigs on

his bare back, by order of the young Master, from his shoulder blades to his hams; I could not count the number of stripes, but they were many. Afterwards, Jan took him on his shoulders, and carried him to his bed-room; and on the next morning I heard it say by old Master Heyder that Joris was dead.

The Prosecutor asked the Witness, Did your young Master also express why Joris was to be brought to the wine store?

Answer. In order to flog him.

Did the two slaves drag Joris to the wine store by their own motive?

Answer. By order of the young Master.

Do you also know the reason why your young Master flogged Joris repeatedly in the vineyard?

Answer. Because he was too weak to do his work.

Would you recognise the rope's-end when it was exhibited to you?

The piece of horse harness having been exhibited to the Witness, he said it was the same instrument with which Joris was beaten in the wine store.

How long in the wine store had the punishment continued?

Answer. This I cannot tell.

Advocate Cloete, for the Prisoner, asked the Witness: Did you not deliver to your Master a message of Geduld, that Joris refused to walk from the vineyard to the dwelling house?

Answer. Yes.

The above written deposition of this Witness, together with the questions put to him, and his replies thereto, having been read to him, he declared to persist in the same.

5th. November, who, having been made acquainted with the reasons why he was called upon, and having promised he would declare nothing but the truth, said that he is a native of Mozambique, (guessed to be thirty-five years of age), slave of old Gebhard, and he further deposed and declared as follows:—

On a certain day, Tuesday or Wednesday, not long ago, I, together with Joris and others, then were in the vineyard, when the old Master David came to us and flogged Joris, who was standing, with a quince-tree twig on his back and shirt,

whilst Geduld and I myself, by order of the old Master, held him each at one of his hands; but I cannot tell the number of stripes. Joris did then do his work with the spade again. At about noon the old Master directed Joris to be laid down on the ground, and flogged him on his bare buttocks with a bundle of quince twigs; but I cannot tell how many stripes he then received. He then went again to his work, and continued therewith till about sunset, when the young Master, (pointing at the Prisoner), came in the vineyard on horseback, and having dismounted his horse, expressed to Joris, "*Do your work.*" Joris yet remained standing, and the young Master then directed him to be laid down on the ground, which was done by Geduld, Toetje, Fortuyn, and myself, and he then flogged him with a bundle of quince twigs on his bare hams; but I did not count the stripes. After this punishment Joris went again and worked with the spade; having done so for a little while he stood still again. The young Master then directed him again to be laid down on the ground, and flogged him with a bundle of twigs on the bare buttocks; but I do not know how many stripes he received on that occasion. Having risen from the ground, he repeated his work with his spade again; and as he then discontinued again, the young Master once more directed him to be laid down on the ground, and flogged him again on the bare buttocks with quince twigs, which were fetched by Africa, by order of my young Master; and after having received that punishment, my young Master directed him to finish the row, which he consequently did. The young master then left the vineyard, and Geduld and myself supported Joris to walk homewards. When at halfway he could walk no further, so that I was obliged to carry him. At the gate of the farm-yard I laid him down. My young Master, together with some men, came there, and asked me where Joris was, to which I replied he is here. My young Master then directed us to take him up and bring him to the wine store. Toetje, I, and Bastiaan dragged him thither, with his belly on the ground. May was ordered by my young Master to fetch a candle, which he brought in the wine store. There Joris was laid down on the ground, and his trousers stripped down; and I then, by order of my young Master, beat him on his bare buttocks with a piece of twisted horse harness,

(the piece of harness produced in Court, was exhibited to the witness, and he recognised it for the same instrument). According to my stupid knowledge I believe I had given him upwards of a hundred stripes with said piece of harness ; after which, I, by order of the young Master, applied vinegar and salt on the beaten parts, and flogged him thereon again ; after which he remained lying on the ground. January was sent by my young Master to fetch a bundle of quince twigs, which were consequently brought there by January ; when, by order of my young Master, I flogged Joris on the bare back with the twigs ; but I do not know how many stripes I had given him with the twigs ; after which, the young Master poured vinegar in the throat of Joris, first a small cup, and when it was emptied, he caused half a bucket of vinegar to be drawn off. Geduld opened his mouth and held his nose to close it, and in this manner the young Master poured the vinegar in his throat. Afterwards, Jan took him on his shoulders, and carried him from the wine store to the slaves' quarters. Soon the next morning, I heard Joris hawking, (roggelen,) I thought no otherwise but that he was alive, and I went to the vineyard to do my work. There the old Master David came to us about 8 o'clock, and told me and the other men, do you know Joris is dead ? Joris was too weak to do work as we, and for this reason he received so many stripes.

The Prosecutor asked the Witness :—

Do you know why the old Master, David, had beaten Joris in the vineyard ?

Answer. Because he did not go on so fast in digging.

Was it from obstinacy that he did not work quickly ?

Answer. It was no obstinacy.

Did Toetje and Jan drag Joris to the wine store by their own motive ?

Answer. No, by order of my young Master.

For what reason did Joris repeatedly discontinue to work with the spade ?

Answer. From weakness.

Advocate Cloete, for the prisoner, asked the witness, was Joris not almost as stout of stature and as strong as you ?

Answer. Yes.

Do you know that Joris, when he was threatened to be

punished for his laziness, pretended that he had suddenly become unwell ?

Answer. No ; and he was also not lazy nor obstinate.

Was the number of stripes mentioned by you in the body of your deposition to have been received by Joris in the wine store, the whole of the number of stripes which he received there ?

Answer. No ; on his buttocks only he received a hundred stripes.

Did you not, subsequent to the application of vinegar and salt, flog Joris on the shoulder-blades only ?

Answer. Yes ; on the shoulder-blades.

Do you not recollect that when the Prisoner had arrived in the vineyard, and when he reprimanded Joris, the slave Stidon expressed to the Prisoner, " I do not know, Master, but Joris becomes from day to day more stupid in his work," or words to that effect.

Answer. Stidon did say so ; but Joris could not work.

Did you not during the time Joris was punished in the wine store, hear it said by Bastiaan, " I certainly have seen people who sham, but in the manner this boy does it I never saw ? "

Answer. I did not hear it.

The Chief Justice asked the Witness, Did you only beat the slave Joris in the wine store ?

Answer. Yes.

How long did that beating in the wine store continue ?

Answer. Very long ; how late we arrived in the wine store I do not know, but our Mistress was already asleep when we left it.

Did you beat during all that time without intermission ?

Answer. The young Master now and then directed me to stop, and then to beat again ; but the stopping was not long.

Advocate Cloete, for the Prisoner, asked the Witness, Did not the Prisoner, from time to time, direct you to discontinue with beating, in order to try whether Joris would speak ?

Answer. Yes.

The deposition of the Witness, together with the queries put to him, and his replies thereto, having been read to him, he declared to persist in the same manner.

6th. Toetje, who having been made acquainted with the reasons of his having been called upon, and having promised he would declare nothing but the truth, said that he is a native of the Colony, (guessed to be twenty years of age), slave of old Gebhard; and he further deposed and declares as follows:—

I was in the village, the Paarl, and returned from thence, as I believe, on a Wednesday afternoon, not long ago, and then went to my work in the vineyard there. The young Master, (pointing to the Prisoner) came up to us, and directed Joris to be laid down on the ground, and caused him to be held fast by four slaves, November, Africa, Jan, and myself, and flogged him on his bare buttocks with quince-tree twigs, which Africa had fetched. I did not count the stripes. I then went to the other farm for fire-wood; subsequent to the candles having been lighted, May came to me and called me by order of the young Master, whom I found in a room, and who directed me to go and fetch Joris. At half-way, at the gate of the farmyard, I met with him, together with Jan, Bastiaan, and little Dampie. Afterwards the young Master came there also, and gave directions to bring Joris to the wine store, to drag him thither. In the wine store the young Master caused him to be laid on his belly, and to be beaten by November on the bare buttocks, with a piece of horse-harness, (the rope's end produced in Court was exhibited, and recognized by the Witness to be the same instrument.) I cannot tell the number of stripes. The young Master then directed vinegar to be drawn from the cask, and has sent for salt, and caused the same to be applied on his buttocks by November, and had given him also vinegar to drink. I opened his mouth, and pressed his nose close. Afterwards, quince-twigs were sent for, with which November flogged Joris on his bare back, from the shoulder blades to the ribs. I did not count the stripes. Afterwards Jan carried him off, and brought him in the slave quarters; and on the next morning the old servant told us in the vineyard that Joris was dead.

The Prosecutor asked the Witness, Do you know how many times Joris was punished in the wine store?

Answer. I saw it only once.

In what state did you find Joris at the gate of the farmyard?

Answer. When I came there, November had him on his shoulders.

How long did the punishment continue in the wine store ?

Answer. At candle-light we went thither, and when we left it, the Mistress of the house was already asleep.

Did Joris, in the wine store, during the beating make any noise ?

Answer. He cried out once or twice ; but for the rest he lay silent.

To what did you attribute that silence ?

Answer. To a faintness.

The Chief Justice asked the witness,

Did the punishment in the cellar continue without intermission ?

Answer. No, but the waiting was particularly for the quince-tree twigs, which were sent for.

Advocate Cloete, for the Prisoner, asked the Witness, Did you hear the slave Bastiaan express in the wine store that he had seen more people that shammed, but not in the manner Joris did ?

Answer. Yes.

Are you not of opinion, that the Prisoner continued with the punishment in the wine store, because he, the Prisoner, was in the idea that Joris was shamming ?

Answer. This I cannot tell.

When the Prisoner reprimanded Joris in the vineyard for his laziness in his work, did you not then hear it said by Stidon, " Master, I do not know what the matter is, but Joris seems, from day to day, to become more dull in his work ? "

Answer. Yes.

Did you not remain in the vineyard from the moment the Prisoner came there until he retired ?

Answer. No.

Did you not see, that Joris, when subsequent to *his* having been punished, the Prisoner admonished him to work with the spade, put the spade in the ground, and spitting on his hands, looked the Prisoner in the face without speaking a single word ?

Answer. No.

The deposition of the witness, together with the queries put

to him and his replies thereto having been read to him, he declared to persist in the same.

7th. Jan, who, having been made acquainted with the reason why he was called upon, and having promised that he would tell nothing but the truth, said that he is a prize-negro, a native of Mozambique (guessed to be about 24 years of age,) in the service of old Gebhard; and he further deposed as follows:—

On a certain day, I do not recollect which day, I was, together with Joris and others, in the vineyard, digging. There came the old Master David, and directed Joris to be laid hold of by two men in the row which he was digging; directed his jacket to be taken off, and gave him some stripes on his shirt with quince tree twigs. I do not know the number of the stripes. Joris then went to his work with the spade. About at noon the old Master directed Joris to be laid down on the ground, and flogged him on his bare back with a bundle of quince-tree twigs tied together. I can also not tell the number of these stripes; but Joris afterwards went to his work again. At about evening, the young Master, (pointing at the Prisoner) came to the vineyard on horseback, and having dismounted his horse, he asked Joris, who was the middle man,—why do you not do your work? Joris replied, he was tired. The young Master then directed Africa to fetch some quince tree twigs, with which he flogged Joris on his shirt and shoulder-blades. Afterwards he caused him to be laid down on the ground by four of the slaves, and then flogged him with a bundle of twigs on his bare buttocks. I did not count the stripes. I also cannot count. The young Master then directed him to do his work, but he could not. Thereupon the young Master caused him again to be laid down on the ground, and flogged him again with twigs on his bare buttocks. Joris was, by order of the young Master, laid down on the ground three times in the vineyard, and the young Master then went home, and I followed him, and went to the slaves' quarters, from whence Bastiaan, Toetje, and myself were sent for by the young Master, who directed us to go to Joris, because little Dampie had brought him a message that Joris could not walk. We met him at the gate of the farm-yard; Geduld and November were with him.

November, who had carried him on his shoulders, had laid him down there. The young Master came there on horseback, and directed Joris to be dragged to the wine store; whereupon Toetje and myself took him at the arms, and dragged him on his knees to the wine store. There the young Master ordered him to be laid down on his belly, and caused him to be flogged by November on his bare buttocks, with a twisted piece of horse harness, (the piece of harness produced in Court having been exhibited to the witness, he recognised it for the same instrument); but I cannot count, and do not know how many stripes he received. The young Master afterwards dispatched the slaves May and Dampie,—the first to fetch vinegar, and the other to fetch salt, which he caused to be mixed, which were then applied on the buttocks of Joris, and November then flogged him again on the buttocks with the piece of harness, by order of the young Master. Afterwards Tom was dispatched by the young Master to fetch quince tree twigs, and November then, by order of the young Master, flogged Joris on the bare back with the twigs, taking one each time. Afterwards, the young Master directed May to draw vinegar from the cask, which he did. The young Master then poured vinegar in the throat of Joris, whose mouth was kept open, and part of the vinegar that had fallen on the ground was thrown in his face. The young Master asked him, whether he could not talk; but he could not speak. The young Master expressed he was obstinate, and ordered November to beat him with force, because Joris must speak. Subsequent to the flogging, I carried him, by order of the young Master, to the slaves' quarters, and laid him in his bed, and covered him with a blanket. The young Master directed Bastiaan to attend Joris. On the next morning, when I was at my work in the vineyard, old Master David came there, and said Joris was dead.

The Chief Justice asked the Witness,—In what manner did you carry Joris?

Answer. On my shoulder.

Did Joris speak when you brought him to the slave quarters?

Answer. No; he could not speak; I laid him on his bed.

The Prosecutor asked the Witness,—Why did the old Master David beat the slave Joris in the vineyard?

Answer. He could not go on so quick with turning the soil with the spade.

Was Joris fit for such work ?

Answer. He could not work equally with the other men ; he was weak, and had no power to handle the spade.

How was Joris when you met him at the gate of the farm-yard ?

Answer. He was lying on the ground.

How long did the punishment in the wine store continue ?

Answer. I have no idea of an hour, and therefore cannot tell how long.

Advocate Cloete, for the Prisoner, asked the Witness,—Did you not, during the punishment in the wine store, hear the slave Bastiaan express,—I often saw how slaves know how to sham, but not as Joris ?

Answer. I did not hear it.

Did Joris not oppose to his being dragged to the wine store ?

Answer. I intended to carry him ; but the young Master directed me and Toetje to drag him to the wine store ; he suffered to be dragged thither.

Did not the Prisoner direct you and the other men at the gate of the farm-yard to lift up the slave Joris, and bring him to the wine store ?

Answer. No, he said to drag him thither.

What people were in the wine store ?

Answer. May, Bastiaan, little Dampie, Geduld, November, Toetje, and myself.

The deposition of the Witness, together with the queries put to him and his replies thereto, having been read to him, he declared to persist in the same.

8th. May, who having been made acquainted with the reason why he was called upon, and having promised he would depose nothing but the truth, said he was born at Batavia, and is a slave of old Gebhard, (he is guessed to be about forty-five years of age,)—he further deposed and declared, viz. :—

On Tuesday evening, in last week, I was at my work in the dwelling house, when at about half past six little Dampie came and called me, by order of my young Master, (the Prisoner,)

to open the door of the wine store. Having arrived for that purpose, at the wine store, Toetje and Jan just then came there with Joris. They held him at the arms, and his feet touched the ground. Joris was then brought into the wine store, and was, by order of my young Master, laid down on the ground by the slaves Geduld, Jan, Bastiaan, and Toetje, and November flogged him with a rope's end on the bare buttocks. I do not know how many stripes he received, but it was many. During the flogging, my young Master directed November to beat him on his hams, and not on his loins. I went, by order of my young Master, to fetch vinegar, —salt was also sent for, and was mixed with the vinegar; and was, by November, by order of my young Master, applied on the buttocks of Joris, and then beat thereon again with the rope's end. Thereupon quince-tree twigs were fetched by order of my young Master; but by whom I do not know; but it was done by somebody who did not belong to the wine store. November, by order of my young Master, flogged Joris with these twigs on his bare back; but how many stripes I do not know. The young Master also poured vinegar into the throat of Joris, and threw some of it in his face; and afterwards Jan carried him on his shoulders to the slave quarters, where Bastiaan was directed to attend him, but on the next morning, about nine o'clock, he was already dead.

The Prosecutor asked the Witness,—In what manner was the punishment on the back effected?

Answer. On both the shoulder-blades.

How long did the punishment in the wine store continue?

Answer. It was nine o'clock when we left the wine store; but the flogging was not continual; but there was talking at intervals.

Were you in the wine store during the whole of the punishment?

Answer. Yes.

Advocate Cloete, for the Prisoner, asked the Witness,—How much time was taken up to fetch the twigs that have been used in the wine store?

Answer. I think upwards of an hour, for it was dark, and I do not know from where they were fetched.

Did you not hear Bastiaan express, that he certainly saw

people who knew to sham, but not to that degree as Joris did ?

Answer. Yes.

Are you not of opinion that the *only reason* why the Prisoner caused Joris to be flogged, and continued it, was that the Prisoner thought Joris shammed ?

Answer. To this I cannot answer.

The deposition of the Witness, together with the queries put to him and his replies thereto, having been read to him, he declared to persist in the same.

9th. January, who, having been made acquainted with the reason why he was called upon, and having promised he would depose nothing but the truth, said that he was born at Mozambique, (is guessed to be 35 years of age), and is a slave of old Gebhard ; and he further deposed and declared as follows :—

On a certain morning, not long ago, when we were busy to turn the soil in the vineyard, old Master David came there, and directed Joris to do his work, and this he could not do equally with us. The old Master then flogged him with a bundle of quince-tree twigs on his back and buttocks. I cannot count ; but he flogged him very much. He flogged him on his back when standing ; and two men, namely, Geduld and myself, held him fast at the hands. At about sun-set, the young Master (pointing to the Prisoner) came to us in the vineyard, and he beat Joris with quince-twigs ; but I was too far off to see it distinctly ; I only saw that Joris was lying on the ground. He afterwards caused him again to be laid down on the ground by four men ; but I then went to fetch firewood, and remained on the lower farm. On the next day I went with the spade to the other estate to do my work, and the young Master then called me, and directed me to apply vinegar, mixed with sour fig leaves, to the body of Joris,—but Joris could not rise, which I mentioned to the young Master, who directed me to apply said things while he was lying down ; and having effected it, I went to my work. A little boy then came and called me to attend Joris. On the way, I met with the old Master and his two sons, who told me that Joris had already died,—when I returned to my work.

The Chief Justice asked the Witness :

Did Joris speak when you applied the vinegar on him ?

Answer. No ; from the moment he was carried out of the wine store, until his death, he did not speak a single word.

Do you know how late it was when Joris was carried out of the wine store ?

Answer. It was late, but I do not know how late.

The above written deposition of the witness, together with the queries put to him and his replies thereto, having been read to him, he persisted in the same.

The Prosecutor declared to desist from the examination of Fortuyn, Jephtha, Africa, and Hans, who were summoned as Witnesses.

The Prisoner said, he has no objection, and that he desists also from the examination of the Witness, Henry Gebhard, and further, to desist from the further examination of these Witnesses which he had called upon on his behalf, and who had already given their evidence on behalf of the Prosecutor, and who, on that occasion, were cross-examined by him.

Whereupon, successively appeared before the Court the hereinafter-named Witnesses of the Prisoner.

Witnesses of the Prisoner.

1st. Thomas, or Little Thomas, who, having been made acquainted with the reason why he was called upon, and having promised he would depose nothing but the truth, said he was a bastard (guessed to be 15 years of age), and servant to old Gebhard ; and further replied to the following queries, as follows :—

Advocate Cloete, for the Prisoner, asked the Witness :

Did you not in the morning of the decease of Joris, observe distinctly that somebody was dragged by the spot between the vineyard and the farmyard.

Answer. Yes.

Where did you see it ?

Answer. On the road up to the gate.

Did November not tell you he had dragged Joris, because he would not walk ?

Answer. He did not tell it to me, but said so to the other people.

The Member of the Court, Neethling, LL.D., asked the Witness: Was the mark that of the feet only or of the body also?

Answer. Of the feet only.

The Prosecutor declared that he had no questions to put to this Witness.

The queries put to this Witness, and his replies thereto, having been read to him, he persisted in the same.

2nd. Leander, who, having been made acquainted with the reason why he was called upon, and having promised he would depose nothing but the truth, stated that he was born at Ceylon, that he is 45 years of age, and a slave of old Gebhard; and he further replied to the following queries, as follows:—

Advocate Cloete, for the Prisoner, asked the Witness,—Did Bastiaan, on the morning of the decease of Joris, not ask you to go to Stellenbosch with him?

Answer. Yes.

Did Bastiaan not add thereto, that he had concerted with the other people, to inform the death of Joris in such a manner that they would now get the Prisoner off the estate?

Answer. He asked me to accompany him to Stellenbosch; but I replied that I knew nothing of the flogging. He also expressed, the young Master must be off from the estate.

The Prosecutor has no question to put to the Witness.

The above questions put to the Witness, and his replies thereto, having been read to him, he persisted in the same.

3rd. John Pigot Watney, who, having been made acquainted with the reason why he was called, and having made oath pursuant to the regulations, said that he is 44 years of age; that he was born in England; and he further replied to the following queries put to him by Advocate Cloete, for the Prisoner,—What can you state respecting the general conduct of the Prisoner, and particularly respecting his direction at his Father's estate?

Answer. Subsequent to the marriage of old Gebhard and his present wife, I was not often on that estate. I certainly

have met with the Prisoner, and found nothing improper in him.

What can you state with respect to the slave Bastiaan ?

Answer. I recollect that in former times he was once discovered in the act of getting wine through a window, by means of a bamboo, in which he succeeded. January was his accomplice ?

Do you know something with respect to the slave Joris ?

Answer. I did not know him.

The Prosecutor said, he has no cross question to put to the Witness.

The above questions, and replies thereto, having been read to him, he persisted.

4th. Jacob Isaac de Villiers, who, having been made acquainted with the reason why he was called upon, and having made oath according to the regulations, said, that he is 30 years of age, and a native of this Colony; and he further replied to the under-mentioned queries :—

Advocate Cloete, for the Prisoner, asked the Witness,—Do you not recollect having seen the slave Joris at the estate of Mr. Gebhard, the Father of the Prisoner ?

Answer. Yes.

Were you, on that occasion, not made acquainted with the cunning and obstinate manner which this slave dissembled, in order to avoid any work or punishment ?

Answer. I was in conversation with old Gebhard, when a tailor came to him, having in his hand a jacket for Joris. Gebhard then observed that on the preceding day a pair of trowsers was made for Joris, but it was already burnt; and that Joris had assigned as the cause of it, that the trowsers having got wet, he had placed it before a fire to dry, and that accidentally it had got in flame. Gebhard directed Joris to try the jacket, on which there were then no buttons. Joris was to wait a while, in which mean while Gebhard told me that some days before, Joris, when at work, had dissembled to be dead; but that from the motion of the pulse, he only observed that he was alive; that he, Gebhard, at about noon, had directed him to be carried to the house, where he had laid on his bed till the evening, when Joris had asked for some brandy,

which was sent to him. He had, afterwards, in the evening, asked for some victuals, and a piece of bread having been given to him, he had asked whether he was to have bread only ; upon which he, Gebhard, had sent him word that he must come to him for other things ; when he actually came with an iron pot, and fetched some victuals. All of which Gebhard told me in the presence of Joris, and asked him whether he did recollect that he had dissembled to be dead : to which Joris made no reply, but laughed, and Gebhard then observed to him, that should he, in future, make a dissemblance, he would take it up for madness.

Did Joris appear to you to be of a healthy and strong constitution ?

Answer. No ; he was not worth a two-pence for me ; he was nothing in his work.

What do you know of the general conduct of the Prisoner ?

Answer. He is an honest young man.

What do you know about the slave Bastiaan ?

Reply. He very seldom worked under my directions. He is an old liar. He once said to old Gebhard, that I, in my capacity of overseer of the road, had said to him, he need no more come to work at the road,—and this was a lie ; for I had not seen him at all on that day.

The Prosecutor asked the Witness,—Do you stand in family relation with the Prisoner ?

Answer. In no relationship.

The replies of the Witness having been read to him, he persisted.

5th. Johannes Jacobus du Toit, who, having been made acquainted with the reason why he was called upon, and having made oath according to the regulations, said that he is a native of this Colony, and Field Cornet at the Paarl ; and further replied to the following questions, as follows :—

Advocate Cloete, for the Prisoner, asked the Witness,—What testimony can you give respecting the general treatment of the slaves on the estate of old Gebhard ; and more particularly respecting the treatment they received of the Prisoner ?

Answer. Respecting Drakenstein, I cannot say much ;

but when they did their work in the village, the Paarl, I could observe no otherwise but the Prisoner treated the slaves well.

Do you know the slave Joris ?

Answer. No.

The Prosecutor has no questions to put to the Witness.

The above queries, and the replies of the Witness thereto, having been read to him, he persisted in his replies.

The Prisoner requests that on his behalf may be examined three witnesses more whom he had not named before ; but who are now before the Court Room, namely, George Lodewyk Horn, Sophia, and Flora.

The Prosecutor submitted the request to the decision of the Court.

The Court doth grant the request. In consequence whereof appeared before the Court, successively, viz :—

6th. George Lodewyk Horn, who, having been made acquainted with the reason why he was called upon, and having made oath according to the regulations, said that he is 50 years of age, born at Bareuth ; and he was further examined as follows :—

Advocate Cloete, for the Prisoner, asked the Witness,—How is generally the treatment of the slaves at the estate of Gebhard ; and how were they particularly treated by the Prisoner ?

Answer. I never heard it say otherwise but that the slaves are well treated. The Prisoner always appeared to me polite and honest.

The Chief Justice asked the Witness,—Are you acquainted with the household of Gebhard ?

Answer. Yes, I called there from time to time.

The Prosecutor said, that he had no cross question to put to the Witness.

The above written examination of the Witness having been read to him, he persisted in his replies.

7th. Sophia, who, having been made acquainted with the reason why she was called upon, and having promised that

she would declare nothing but the truth, said she was born in this settlement (she is guessed to be 30 years of age,) slave of old Gebhard; and she was further examined as a Witness, viz:—

Advocate Cloete, for the Prisoner, asked the Witness,—What do you know of Joris with respect to his dissemblance, in order to avoid punishment?

Answer. On a certain day he was carried home from the vineyard by the slaves, as if he was dead. He remained lying in his room till 8 o'clock at night. My Master, and my young Master, William, went to see him. He afterwards rose from his bed, and came in the house to get his victuals.

The Prosecutor has no cross-questions to put to the Witness.

The examination of the Witness having been read to her, she persisted in her reply.

8th. Flora, who, having been made acquainted with the reason why she was called upon, and having promised she would declare nothing but the truth, said she was a native of this Colony, (guessed to be about 40 years of age), and that she is a slave of old Gebhard; and further replied to the following queries:—

Advocate Cloete, for the Prisoner, asked the Witness,—What do you know respecting the manner in which Joris knew to make dissemblance?

Answer. He once dissembled to be dead, and was as such carried from the vineyard to the house; but at night he came into the house to fetch his victuals.

Did Joris not tell to his fellow-slaves that he had dissembled to be dead?

Answer. I do not know; at least he did not tell it to me.

What do you know of Bastiaan?

Answer. Nothing; and he is always attentive to his work.

Do not you know anything of his roguery?

Answer. Nothing else, than that he now and then goes to steal at others.

The Prosecutor said that he had no cross questions to put to the witness.

The examination of the Witnesses having been concluded, the Deed of Inquest, and the Certificate of the Surgeon, copied in the premises, were read in public.

Whereupon the Court pronounced the enquiry to be closed, directing the Prosecutor to indict the Prisoner immediately, as to him shall seem expedient, according to the nature of the case, and the law of the land.

Indictment in the Case of the Deputy Fiscal, J. J. LIND, as Agent of the Landdrost of Stellenbosch and Drakenstein D. J. VAN RYNEVELD, Prosecutor, in a Criminal Cause, versus GEBHARD, Prisoner, summoned in said Case:—

Honourable Sir, and Worshipful Gentlemen, The Crime which is now brought before this Tribunal has, within a short period, taken place so often that the welfare of this Colony really requires that the same be punished with the utmost severity, in order to put an example that we are not allowed to act rashly and unpunished with the life of our Slaves and fellow creatures; their condition is already deserving of compassion, must it then be made worse by a bad treatment, and the cruelty of those who have the command of them, and be put on the same footing as the unreasonable brute? No! Worshipful Judges, the mild and humane Laws of this Colony, the mild opinion of His Majesty's Government respecting their fate, will not suffer that these creatures, who are our fellow men and fellow creatures, be ill treated without any cause. Yes! not only ill treated, but killed in a cruel manner. Who will not be indignant to see before him one of our fellow inhabitants, who has caused to be flogged to death a defenceless, helpless creature, entrusted to his care; nay, even defile partly, by such punishment, the hands which he must make use of for his defence.

It will not be necessary to request that this crime may be taken into consideration by your Honor and your Worships, who, as Judges, are to try him;—the certainty rests with me, that the feelings of every one of you must have risen to the highest degree;—a sacred duty called on you to protect, not only the welfare of Christians and free men, but that of the Slaves, is also particularly entrusted to your protection. You

watch their fate, as fathers! You soften their situation,—which is already hard enough!

The crime, or rather the abominable crime, was, in the following manner, communicated to the Landdrost of the District Stellenbosch, whose Representative I am here, and is now brought before your Worships.

The slave Bastiaan, belonging to Johan Wilhelm Ludwich Gebhard, the Father of the Prisoner, informed the Landdrost, on the 12th of last September, that his fellow Slave, named Joris, a native of Mozambique, after having received a correction from the Overseer David Heyder, in the morning of the 10th of the present month of September, was afterwards punished, by the Prisoner, in such manner that he died in consequence of such punishment.

The Landdrost, immediately, upon this information, required two Heemraads to examine said Bastiaan, and have his statement executed before them; which having been effected, the Landdrost, on the same day, required said Heemraads to proceed to the Estate of said Gebhard, in company with the District Surgeon Robert Shand, in order to make an enquiry as to the death of said Joris, and to inspect the corpse in the presence of him, the Landdrost, and which was effected on the same day, at about four o'clock in the afternoon, when the Commissioners, on their arrival at said Estate, found as follows:—

F. I. of the Deed of Inquest.

The Commissioners having returned, the Landdrost on the next morning continued the enquiry, and having heard all the Witnesses who were present at the commission of the crime, the further preparatory Informations in this case were collected, and transmitted to Cape Town, on the strength whereof an application was made to your Honor and your Worships, for authorisation to apprehend the Prisoner, which request was granted on the 16th of last September,—and this day was fixed for the Trial.

From the statement of the Witnesses who have been examined, the following circumstances, and occurrence of the whole, will have sufficiently appeared:—

At about the evening of the 10th of September last, the Prisoner proceeded to the Vineyard of his Father, Johan

Wilhelm Ludwich Gebhard, where some Slaves were busy in turning the soil with spades; he there met with a certain David Heyder, who was stationed there by his Father as the Overseer of the work of the Slaves.

This man acquainted the Prisoner, at his arrival, that a Slave, named Joris, or George, a Native of Mozambique, was punished by him on that morning, on account of his laziness and obstinacy in his work; the Prisoner, who seemed not to be content with such punishment, went immediately to said Slave, who was still busy in digging the Vineyard, and required of him to do his work with more speed, tho' it sufficiently appeared, from the statement of the Witnesses, that he was weak and unfit for such work.

The Prisoner having observed that this Slave did not do his work with the same speed as the others, attributed it to obstinacy, and, without inquiring into the true cause of it, directed him to be stretched out on the ground and be held fast by four Slaves, and punished him three times on his bare back parts, in a terrible manner, with twigs of the quince tree, which were procured, and were exchanged during the punishment.

After this punishment, which had already so much weakened said Slave Joris, of Mozambique, the Prisoner was not yet satisfied with his ill-treatment;—he directed this Slave to be brought to the Wine Store, and be punished there again, without said Slave having given the least cause for the preceding, as well as for this further punishment. On the contrary, his situation, subsequent to the punishment, was such that this unhappy creature could neither speak nor walk.

Nothing, however, stopped the cruelty of the Prisoner. The Slave Joris was conveyed to the Wine Store, supported by two of his fellow Slaves, in order to be punished there again;—but having advanced till half-way, he was not able to stand upon his legs;—he observed this to one of his fellow Slaves, who had so supported him, and one of them, named November, convinced of his weakness, took him upon his shoulders, and carried him further, and to the gate of the Farm Yard of the House;—having arrived there, he laid him on the ground; the Prisoner thereupon came up to them, looked at it with

indifference, and persisted in his cruel intention that Joris should be punished in the Wine Store.

This indifference, this horrible indifference, shews immediately the cruel characteristic of the Prisoner;—he saw a creature before him, who at that moment shewed no obstinacy, could commit no crime whatever,—he saw him in this already miserable situation. The Prisoner cannot pretend that the Slave dissembled to be unwell, or weak; it appears too plain, from the depositions of the Slaves November and Geduld, that he was totally unable to walk, wherefore they have supported him thither, and November took him upon his shoulders, whilst Geduld supported his head; and the already exorbitant punishment which the Slave had received in the vineyard, from the Prisoner himself, could not fail to cause the weak situation of the Slave, and convince the Prisoner thereof. This, however, did not bring the Prisoner back from his cruel intention;—the Prisoner was only meditating how he could punish him more, and ill-treat him further; he directed him to be dragged to the Wine Store, and this severe order was executed;—he was dragged over the ground, on his belly, to the Wine Store. Here the further horrible action took place;—the Prisoner directed him to be stretched out on the ground, and directed the Slave November to punish him in a cruel manner on his bare back parts, with a piece of harness, which is now produced to your Honour and to your Worships; the degree of this punishment will sufficiently appear, from the deposition of November, who himself effected the same.

The other Slaves who were present on that occasion have corroborated it. The instrument itself shews how cruel the punishment must have been. The Prisoner had not yet pushed his inhumanity to the highest top:—No!—he wishes the unhappy slave to be punished to death;—he now directed twigs of the quince tree to be fetched, and caused him to be punished therewith on his bare back;—he had not chastised him enough,—he sent for salt and vinegar, and almost a bucket full of vinegar, mixed with salt, was applied to the wounds, and he was flogged again;—a cruelty which will make the rudest man shiver to take into his head,—and a cruelty which disgraces humanity, and makes the man become a brute. These punishments in the Wine Store, by candle-light, continue

for about two hours consecutive. To bestow almost two hours to chastise his fellow creature to death, can only rise in a man who no more knows the duties of mankind, who treads on the Laws of Nature. The punished and ill-treated Slave was then senseless, at last lifted up by one of his fellow Slaves, carried off, laid on his bed, and left to his fate. The consequence of the horrible punishment and ill treatment which the slave Joris underwent and suffered was, that Death released and rescued the unhappy Joris, of Mozambique, from his miserable and pitiable situation, at about eight o' clock the next morning.

This scene, a true statement of the nature of the crime, is declared by many Witnesses unanimously. These Witnesses are Slaves, partly under the command of the Prisoner;—perhaps it will be attempted to reject their depositions on that account;—but Honourable Sir, and Worshipful Gentlemen, how could this crime be proved otherwise but by these Witnesses?—they, only, were present at the commission of the crime, and are, therefore, the only ones on whom the Judge is to decide. The Prisoner, also, produced several of these Slaves as Witnesses; and were it only one or two of them who stated the aforesaid circumstances, there may then be some doubt as to the truth of their depositions, and that they were incited by hatred against him; but No! here is a number of Witnesses who were present at the commission of the crime, and they have stated the circumstances minutely and unanimously; and, therefore, there can be no doubt in the mind of the Judge. And, Worshipful Judges, the crime moreover appears in the clearest manner from the Deed of Inquest. The Deed of Inquest declares and points out, that the Slave Joris died in consequence of ill-treatment; this ill-treatment was partly effected by the Prisoner himself, and partly by his directions;—and he must, therefore, be judged guilty of the crime he is charged with.

It would be useless to take up the time of the Court, with respect to the Commentaries or proof, in Criminal cases; it only rests with the Judge, in how far credit can be given to the Witnesses and proofs produced in a Criminal Prosecution; according to this conviction, this case must also be decided. The Crime charged to the Prisoner in the Deed of Accusation

rests on Witnesses and proofs; and they are such that no doubt can be in the mind of the Judge.

The Laws of this Country have established the Punishment of Death on the same; and we therefore proceed to the following conclusion:—

For which, and other reasons, if need be, hereafter to be stated, the R.O. Prosecutor demands that the Prisoner shall be condemned by Sentence of your Honor, and your Worships, to be conveyed to the usual Place of Execution in this Town, and being then and there delivered up to the Executioner, shall be punished, with a halter round his neck, at the gallows, until he be dead:—With condemnation of the Prisoner in the Costs of the Prosecution, and of the Law, &c.

(Signed) J. J. LIND, Deputy Fiscal.

Advocate Cloete says in defence of the Prisoner,

Defence, in the Case of William Gebhard, at the Suit of the Landdrost of Stellenbosch and Drakenstein, D. J. van Ryneveld, R.O.

Honorable Sir, and Worshipful Gentlemen,

“*Audi et alteram partem*” is a lesson so carefully prescribed to every Judge, and is so strictly observed by this Worshipful Court, that it is scarcely necessary to repeat it in a case of so much importance as the present; which, though the same was represented in the most black colour, yet has a favourable side also; not, however, to acquit the Prisoner altogether, but yet to clear him in the mind of the Judge from a suspicion, as if the Prisoner, (in whose favor at the first insight, all suspicions ought to plead,) can either with respect to the offence, or with respect to the punishment thereon established, not be equalled to those wilful offenders, who have disregarded every law, and have sought delight and profit in murder, depredation, and plunder.

Without suffering ourselves to be led astray by our own sentiment, without intending to influence it in the mind of the Judge, without suffering ourselves to be terrified by the horrible punishment demanded by the Prosecutor, we shall quietly enquire whether the Prisoner be guilty of the *homicidium dolorum*, on which alone the punishment demanded by the Prosecutor

can be inflicted; and the Judge will then, jointly with me, be convinced that the Prisoner, howsoever improper he had acted, yet he can never be considered guilty of that crime.

In considering this point, the Judge will, in the first instance, enquire, whether in this case the *Judicium Medicum* be exempt from that sense, which often is the consequence of an idea of a great ill treatment. The Judge will particularly consider, that the whole of the circumstances of the case rest upon depositions of Slaves not sworn to—who were under the direction of the Prisoner, and who are certainly no friends of him. Let us for a moment admit these circumstances to be so aggravating, as they are represented by the Prosecutor himself, even then the charge cannot be of that nature, as to paint the Prisoner a murderer: no, even then the Judge will find causes to acquit him of so horrible an offence; and so much the more, when the Judge shall pay attention to the circumstances which speak in favor of the Prisoner.

We will admit, for a moment, that the unfortunate death of the slave Joris, (alias George,) cannot be attributed to any other cause but to the punishment applied on him; and let us then consider whether this act can be compared to the *homicidia dolosa*. It is proved that the Slave Joris, otherwise a stout and able workman, on the 10th instant was during Prisoner's absence, extremely lazy, and had refused to do his work; that the overseer, named Heyder, having recommended him to do his work properly, he laughed at that man; and that when this man had given him a single stripe, he had yet continued on his laziness; he had even provoked that man by clapping with his hands: this man deemed it his duty to communicate these circumstances to the Prisoner, who had the direction on his Father's Estate, when at about the evening, the Prisoner came on the spot, in order to inspect the work that was done. Good order amongst a number of such slaves consequently required that he be punished for such conduct; and this punishment was effected in the field, and in a manner, and with an instrument, of which nothing is uncommon; and the Prisoner, consequently, did not act in any illegal manner, either with respect to the circumstances, or in respect to the number of stripes.

This Slave thereupon pretended he could not walk, which

the Prisoner could not attribute to any other thing than to those cunning tricks which that slave had played before, repeatedly, and he punished him on that account; but in a manner which certainly cannot be represented in that horrible manner as the Prosecutor did; and this will be proved to the Judge by the following circumstances, which the Advocate for the Prisoner shall take the liberty to refer to.

In judging this case, the Court will certainly remind the precept of the *Lex 4, Pand. ad legem Corneliam de Sicariis*, "*In malificus voluntatum o exitum spectare debere*," which precept is suggested to the Judges, by Cicero, in his speech, *pro Milone*, in these words, "*Non exitus rerum sed hominum concilii vindicantur*."

Keeping this rule in mind, the Judge will, with me, enquire, whether the Prisoner was, in his act, conducted by such *concilium* or *propositum occidendi*, or whether such *animus occidendi* did not exist; and when of course the punishment demanded by the Prosecutor, cannot be inflicted, as it has been taught to us, that in *homicidi* a very strict but important distinction is made, because of *homicidia culpa lata* having been committed, it is not the same thing as *homicidia dolora*, and cannot be punished capitally. See *Voet Comment. ad Pand. a legem Cornelie de Sicariis, sec. 9*.

(a.) This being the case, the Judge will consider in the first place, that the Prisoner acted *ab ovo in re licita*; that on account of the laziness and obstinacy of the Slave Joris, (alias George,) he had just cause to punish him, and that he of course is not actionable for the punishment itself, but only for excess; in which respect it is decided, that a man who committed excess may be considered guilty of *culpa lata*; but by no means of *dolus* or premeditated intention,—and for this reason, even by the English Laws, an excess in the punishment is neither considered or punished as murder. See Blackstone in his Commentaries, Book 4, Cap. 14, Page 200, viz:—

"But if a person so provoked, had unfortunately killed another by beating him in such a manner, as shewed only an intent to chastise, and not to kill him, the Law so far considers the provocation of contumelious behaviour, and to adjudge it only manslaughter, and not murder."

It is decided in the same manner by our Law, in the event

of persons having assaulted others actually with a mortal instrument, and wounded them in such a manner that death was the consequence; if it only appears that they had an intention to wound, not to kill, these have escaped the punishment of death. See Criminal Consultations, No. 68.

(b.) In the next place it must be considered that the Prisoner did not make use of a mortal or dangerous instrument; but only such instruments which are commonly used in punishments, and of which no fatal consequence was ever experienced,—a horse harness, or twigs of the quince tree, are no instruments that are ranked amongst the malicious instruments. See Carpzovius, Ch. 3, Sec. 8 and 11.

(c.) In the third place, the number of stripes was not so many as could have occasioned death: all the Witnesses agree that the stripes applied in the vineyard were not many, and those applied in the wine store, according to the Witness Bastiaan, who stated the greatest number, was no more than one hundred and thirty-nine stripes, a number which certainly cannot be considered as mortal, if we consider that in the army and navy 700 to 800 stripes are applied, with infinitely more dangerous instruments, on a white skin, which is much more tender than a black, and yet without fatal consequences.

(d.) In the fourth place, it appears, that the Prisoner had no other intention but to punish, and that he had no *animus occidendi*; because it appears that he positively directed November, who effected the punishment, not to beat on the loins, on which it may be dangerous to beat: this is voluntarily stated by the Slave Geduld, and his deposition will deserve credit on this head.

(e.) In the fifth place, it appears that subsequent to the punishment, the Prisoner had given positive directions to the Slave Jan to attend the Slave Joris, and to procure and apply such things as are best calculated to cure such wounds or contusions; and consequently, in this respect also there can have been no *animus occidendi*.

If, now, the Judge add to all these circumstances, which exonerate the Prisoner from every malicious intention, that the Prisoner is a young man who was entrusted by his father with the care of his estate and slaves, who could have had no other interest but that of his father, who was responsible for the life and welfare of these Slaves entrusted to his father, as

well as to himself, then, certainly, every suspicion that he had any intention or idea that the Slave may perish will be removed.

The Advocate for the Prisoner is obliged further to observe, that the R.O. Prosecutor being led astray by his sensibility, has not only represented the case in the most unfavorable light, and, moreover, accused the Prisoner of a cruel ill-treatment, as never before took place; he accused the Prisoner of having punished the Slave, though he was on that day punished twice by the Overseer Heyder. This is true, but the Prosecutor has omitted to add, that it has appeared on this trial, and that it was proved, that the Prisoner was ignorant of this preceding punishment. See the deposition of the said Overseer Heyder.

The Prisoner is accused, that he caused the slave to be punished in the wine store, during two hours; but here also the Prosecutor has forgot that it is proved in evidence, that the greatest number of stripes which were applied were no more than 139. See the deposition of Bastiaan; but which number is stated by other witnesses, to have been no more than 100; and consequently the punishment cannot be called a severe punishment.

The Prosecutor has also forgotten that it is also proved in evidence, that from the time of two hours, upwards of an hour had elapsed to fetch the twigs of the quince tree. See the interrogatories of May.

And the Prosecutor finally forgot that November, who applied the stripes, declared himself that he did so only by intervals, and that repeated opportunities were left to the slave Joris to have the punishment discontinued, by asking for pardon.

The Prisoner is also accused, that he had pushed the ill treatment to the highest degree, by having caused the slave to be beat again on the parts on which he was beaten before, and on which something was applied; this is however altogether a falsehood—the salt and vinegar were applied as a stimulant as practicable everywhere, and by no means to chastise the slave; and subsequent to the punishment on the buttocks, or subsequent to the application of said stimulant, the Prisoner directed him to be beaten on the shoulder-blades only, and to take care not to beat on the loins. See the deposition of November.

Why did the Prosecutor, in that manner, pervert the truth, at least the depositions of the Witnesses in disadvantage of the Prisoner: is it not stated by these Witnesses, that during the time of the punishment, it was effected by intervals: and if we add thereto, the time required to get salt and vinegar, and so forth, the time of the actual punishment will be reduced in proportion to the number of stripes stated by the Witnesses; this number was pretty near fixed, and, consequently the degree of the punishment must be ascertained from that number, but not inferred from the time.

The Prisoner was also depicted as a monster, who has caused the unfortunate Joris to be beat again on the parts on which said stimulant was applied; but this is contradicted by November and Geduld, as already stated.

Where is the ground to suspect the contrary? It is also to be observed in favour of the Prisoner, that the slave Joris was a stout man, a native of Mozambique, as stated by Geduld and November; and, who, therefore, could not have been the weak man who he dissembled to be, in consequence of the punishment he received in the vineyard, unless the punishment applied by the overseer Heyder may have been severe; for which, however, the Prisoner is not responsible. It is, at least, proved that the Prisoner had no other intention but to correct and punish the slave; and that, consequently, he cannot have had *animus occidendi*, which alone can subject him to the punishment of death. And if the unfortunate Joris may have died in consequence of the stripes he received from the Overseer Heyder, from the Prisoner and from November,—then the Prisoner alone is not responsible for the consequences of such punishment; but according to the *Lex, Ult. f. f. ad Leg. Com. de Sicariis*, the blame must be laid on them all and equally.

Telus cujusque in hoc collectorum contemplare debet.—Vide Carp. 24 Chap. § 16, 17, 19, 20, and 21.

The Advocate for the Prisoner therefore prays that the claim may be rejected, and that your Honor and your Worships may be pleased to adjudge such less punishment as to your Worships, according to law, shall seem meet.

(Signed) H. Cloete, *Esq.*, Advocate.

THE SENTENCE OF THE COURT OF JUSTICE.

The Court, after trial, having heard the Indictment of the Prosecutor, and the Defence of the Prisoner; and having considered everything deserving of attention, and that could move them in anywise, administering justice in the name and on behalf of His Britannic Majesty, considering that notwithstanding the want of the oath on the depositions of all the witnesses produced on the part of the Prosecutor, excepting one, yet it has appeared to the Court, in a legal manner, from the combined circumstances appearing on the trial, and unconnected with the want of the oath of said depositions, that the Prisoner is the wilful author of the ill-treatment committed on the Slave Joris, *alias* George, of which the death was the unavoidable consequence—doth pronounce the Prisoner guilty of the Crime of Wilful Murder; and doth condemn him, consequently, to be conveyed to the usual place of execution, and being there delivered up to the Executioner, to be punished with a halter round his neck, at the gallows, until he be dead: and doth condemn the Prisoner in the Costs of Suit and of the Law.

Thus done and decreed in the Court of Justice, at the Cape of Good Hope, year and day first above written, and promulgated on the same day.

(Signed) J. A. TRUTER,
WM. HIDDINGH,
J. H. NEETHLING,
F. R. BRESLER,
J. C. FLECK,
P. J. TRUTER,
D. F. BERRANGE.

In my presence,

(Signed) D. F. BERRANGE, Secretary.

I certify that with the exceptions marked by me in the margin the above printed copy of the trial of William Gebhard is a correct translation of the Records in Dutch laid before the Court of Appeals.

(Signed) J. P. SERRURIER.

[Enclosure 19 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Justice in Cape Town, specifying the nature of the crime, the class of persons convicted, and the number convicted from 1814 to 1825 inclusive.

Compiled from the original sentences deposited in the office of the Secretary to the Court of Justice and to which the "Fiat" of the Governor is affixed, and from the return of criminal causes heard and determined by the Court of Appeals.

Crimes.	Class.	Number of each Class Convicted.	Total Number of Convictions.
Murder	Free Persons	13	78
	Hottentots	19	
	Bushmen	15	
	Free Blacks	3	
	Slaves	28	
Accomplices to Murder	Hottentots	9	13
	Bushmen	1	
	Slaves	3	
Infanticide	Hottentots	2	6
	Slaves	4	
Homicide	Free Persons	3	12
	Hottentots	6	
	Bushmen	1	
	Free Blacks	1	
	Slaves	1	
Rape	Free Persons	2	6
	Hottentots	2	
	Slaves	2	
Assault with intent to commit Rape.	Free Persons	6	9
	Free Blacks	1	
	Slaves	2	
Incest	Free Persons	5	5
Unnatural Crime	Free Persons	1	2
	Hottentots	1	
Fornication and Seduction	Free Persons	2	4
	Hottentots	2	
Treason and Rebellion	Free Persons	39	39

Crimes.	Class.	Number of each Class Convicted.	Total Number of Convictions.
Piracy	Free Persons	5	12
	Convicts	7	
Arson	Hottentots	4	5
	Slaves	1	
Perjury	Free Persons	3	3
Forgery	Free Persons	11	11
Uttering Forged Money .	Free Persons	6	6
Embezzlement and Peculation.	Free Persons	8	8
Fraud and Theft . . .	Free Persons	5	19
	Hottentots	4	
	Free Blacks	2	
	Slaves	8	
Excessive Ill-treatment of a Slave.	Free Persons	3	3
Assault by a Slave on his Master.	Slaves	13	13
Wilful and Malicious Wounding.	Free Persons	12	39
	Hottentots	17	
	Bushmen	2	
	Free Blacks	3	
	Slaves	5	
Assault and Robbery .	Free Persons	1	7
	Hottentots	2	
	Bushmen	1	
	Slaves	3	
Assault and Violence .	Free Persons	7	34
	Hottentots	12	
	Bushmen	5	
	Free Blacks	4	
	Slaves	6	
Resisting Officers of Justice	Free Persons	1	15
	Hottentots	5	
	Bushmen	1	
	Free Blacks	3	
	Slaves	5	
Aiding the Escape of a Convict.	Free Persons	2	2

Crimes.	Class.	Number of each Class Convicted.	Total Number of Convictions.
Vagabondizing and Desertion, including Burglary and Theft, Assault and Violence, and Cattle Stealing.	Free Persons	2	335
	Hottentots	180	
	Bushmen	31	
	Free Blacks	2	
	Slaves	120	
Burglary and Theft	Free Persons	7	130
	Hottentots	59	
	Bushmen	5	
	Free Blacks	9	
	Slaves	50	
Theft	Free Persons	43	116
	Hottentots	25	
	Free Blacks	12	
	Slaves	36	
Horse, Sheep, and Cattle Stealing.	Free Persons	3	57
	Hottentots	39	
	Slaves	15	
Stealing from a Wreck	Free Persons	4	4
Receiving Stolen Goods	Free Persons	11	50
	Hottentots	17	
	Free Blacks	7	
	Slaves	15	
Harbouring Slaves	Free Persons	1	2
	Hottentots	1	
Fraud and Giving False Information.	Free Persons	3	7
	Hottentots	4	
False Accusation of Crime	Hottentots	1	1
Fraud in the Registration of a Slave.	Free Persons	1	1
Libel	Free Persons	5	5
Illegally Returning from Banishment.	Free Blacks	1	1
Conspiracy to Destroy a Village.	Hottentots	5	5

The above return has been framed from the original sentences deposited in the office of the Secretary to the Court

of Justice, and to which the "Fiat" of the Governor is affixed, and from the Return of criminal causes tried by the Court of Appeals.

(Signed) JOHN GREGORY.

Cape Town,
28th February 1827.

[Enclosure 20 in the above.]

Return of Crimes of which individuals have been convicted by the Court of Landdrost and Heemraden at Stellenbosch from 1819 to 1823 inclusive.

Description of Crime.	Total.
Ill-treatment of Slaves and Hottentots	54
Lodging false complaints and accusations	59
Disorderly and riotous conduct	49
House Molestation	15
Assault	23
Resisting Officers of Justice	4
Wounding	6
Disobedience of District Orders	44
Breach of the Pagt Laws	6
Neglect of Duty by Fieldcornets and Constables	12
Insolent Conduct	5
Horse, Sheep, and Cattle Stealing	9
Desertion	35
Desertion, Vagabondizing, and Theft	32
Theft	41
Receiving and Purchasing Stolen Goods	9
Using and not reporting Goods found	2
Giving false information and making false statements	2
Falsity	3
Illegal Detention of Hottentots and Free Blacks	2
Illegal Detention of Hottentot Children	3
Employing Indentured Servants	2
Breach of Engagement between Masters and Servants	2
Ill-treatment of Indentured Servants (European)	4
Giving a false pass	1
Unlawful imprisonment of a slave	1
Not reporting the death of a slave	1
Gambling	2
Injurious Expressions	3
Issuing " Good Fors "	1

The above is an abstract of the Return of Criminal causes furnished by the Secretary to the District of Stellenbosch.

(Signed) JOHN GREGORY, Secretary.

[Enclosure 21 in the above.]

Return of Crimes of which Individuals have been convicted
by the Court of Landdrost and Heemraden at
Swellendam during the six years from 1st January 1818
to 31st December 1823.

Description of Crime.	Total.
Ill-treatment of Slaves and Hottentots	27
Making false complaints	17
House Molestation	5
Assault	18
Wounding	5
Disobedience of District Orders	24
Breach of the Papt Laws	2
Insolence	4
Horse, Sheep, and Cattle Stealing	46
Desertion	6
Theft	17
Receiving Stolen goods	1
Fraud	4
Illegal Detention of Hottentots	2
Breach of engagements between servants and masters	1
Neglecting to register Slaves	9
Burying Slaves and Hottentots without giving notice to the Field Cornet	3
Harbouring deserted Slaves and Hottentots	13
Aiding the escape of Prisoners	2
Seduction	1
Manslaughter	1
Illegally punishing a Hottentot	1
Perjury	1
Holding a public sale illegally	1
Breach of the Pound Regulations	4
Breach of the Turnpike Regulations	5
Using Government Grazing Ground	1
Using Government Oxen	1
Breach of the Game Laws	5

The above is an abstract of the "Return of Criminal Causes"
furnished by the Secretary to the District of Swellendam.

(Signed) JOHN GREGORY.

[Enclosure 22 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Landdrost and Heemraden at George during the six years from 1st January 1818 to 31st December 1823.

Description of Crime.	Total.
Ill-treatment of Slaves and Hottentots	19
Making false complaints	17
Assault	15
Wounding	2
Disobedience of District Orders	14
Breach of the Pagt Laws	3
Neglect of Duty	1
Horse, Sheep, and Cattle Stealing	10
Vagabondizing and Cattle Stealing	5
Theft	5
Falsity	2
Receiving Stolen Goods	1
Harbouring Hottentots under contract	3
Injuring another person's horse and cattle	2
Cutting wood in the Government Forests without license	2
Attempt to poison	1
Excess in the punishment of a Slave	1
Injurious Expressions	1

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary to the District of George.

(Signed) JOHN GREGORY.

[Enclosure 23 in the above.]

Return of Crimes of which Individuals have been convicted
by the Court of Landdrost and Heemraden at Uitenhage
from 1818 to 1823 inclusive.

Description of Crime.	Total.
Ill-treatment of Slaves and Hottentots	2
Lodging false complaints	7
Assault	4
Breach of the Papt Laws	2
Insolent Conduct	2
Cattle Stealing	7
Theft	18
Receiving and concealing stolen goods	3
Not reporting Cattle found	2
Harbouring Servants	1
Maiming and slaughtering an ox	1
Assault with intent to commit rape	1
Issuing or passing a "Good For"	1

The above is an abstract of the "Return of Criminal Causes"
furnished by the Secretary to the District of Uitenhage.

(Signed JOHN GREGORY.

[Enclosure 24 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Landdrost and Heemraden in Albany during the three years 1821, 1822 and 1823.

Description of Crime.	Total.
Attempt to commit rape	1
Excessive ill-treatment of a slave	1
Forgery	2
Robbery	1
Ill-treatment of Hottentots	2
Making false complaints	4
Disorderly and riotous Conduct	9
Assault	18
Wounding	2
Disobedience of District Orders	9
Breach of the Papt Laws	27
Neglect of Duty and refusing to work	17
Insolence and Abusive Conduct	12
Contempt of Court	1
Horse, Sheep, and Cattle Stealing	7
Desertion (Hottentots and Slaves)	2
Theft	28
Receiving Stolen Goods	3
House Molestation	3
Settlers deserting from the service of their Masters	4
Settlers leaving their Locations to traffic in the country	2
Settlers combining against a Master	2
Settlers refusing to take the oath of allegiance	61
Settlers' illicit traffic with the Caffres	3
Employing Indentured Servants	1
Disposing of another person's property	2
Rescuing Cattle sent to the Pound	4
Trespass	10
Buying a soldier's uniform	1
Selling spirits to a contracted Hottentot	1
Taking goods into the Country for sale without license	1
Using a false pass	2
Forcibly taking away a horse	1
Neglecting to produce goods advertised for sale by the Sequestrator	2
Killing a tame Quagga, the property of another	2
False Accusation	1
Defamation of Character	1
Breach of Market Regulations	1
Breach of Water Regulations	3
Quitting the Commando without a discharge	7

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary to the District of Albany.

(Signed) JOHN GREGORY.

[Enclosure 25 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Landdrost and Heemraden at Graaff Reinet during the six years from 1st January 1818 to 31st December 1823.

Description of Crime.	Total.
Ill-treatment of Slaves	9
Ill-treatment of Hottentots	18
Making false complaints	20
Disorderly and riotous conduct	11
Assault	30
Wounding	4
Disobedience of District Orders	20
Breach of the Papt Laws	5
Neglect of Duty by Constables and others	12
Insolence	6
Desertion and Resistance	5
Horse, Sheep, and Cattle Stealing	10
Vagabondizing, Deserting, and Cattle Stealing	130
Theft	27
Receiving Stolen Goods	2
Using and not reporting Goods found	1
Illegal Detention of Hottentots and their Cattle	2
Breach of Engagement	1
Not reporting the death of a Hottentot	1
Harbouring Hottentots without passes	4
Punishing Criminals without authority	1
Changing marks on Cattle	2
Perjury	2
Seduction	2
Using and ill-treating stray horses	4
Refusing to go on Commando	4
Selling oxen taken from the Caffres (while under charge)	1
Illicit traffic beyond the Borders	1
Selling a gun to a Bastaard.	1
Bartering Bosjesman Children	2
Breach of the Police Regulations (Graaff Reinet)	2

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary to the District of Graaff Reinet.

(Signed) JOHN GREGORY.

[Enclosure 26 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Deputy Landdrost and Heemraden at Cradock during the six years from 1st January 1818 to 31st December 1823.

Description of Crime.	Total.
Ill-treatment of Hottentots and Slaves	4
Making false complaints and accusations	6
Assault	2
Disobedience of District Orders	5
Horse and Sheep Stealing	3
Vagabondizing and Theft	22
Allowing Prisoners to escape	3
Shooting at "runaway Bosjesmen"	2
Employing public Labourers in private service	1

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary to the Sub-Drostdy of Cradock.

(Signed) JOHN GREGORY.

[Enclosure 27 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Deputy Landdrost and Heemraden at Beaufort during the four years from 1st January 1820 to 31st December 1823.

Description of Crime.	Total.
Adultery and Incest	2
Fraud	1
Ill-treatment of Hottentots and Slaves	1
Making false complaints and accusations	4
Disorderly conduct	2
Assault	3
Disobedience of District Orders	15
Insolence	1
Horse, Sheep and Cattle Stealing	10
Theft	3
Retaining strange Cattle	1
Vagabondizing and Cattle Stealing	58
Illegal detention of Hottentot Children	1
Illegal detention of Hottentot Cattle	3
Harbouring Hottentots without passes	2
Cutting Timber in Government Forests without license	1
Crossing the boundary of the Colony	3
Aiding Prisoners to escape	4
Resisting the sending of Cattle to the Pound	1

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary to the Sub-Drostdy of Beaufort.

(Signed) JOHN GREGORY.

[Enclosure 28 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Landdrost and Heemraden in the District of Worcester (late Tulbagh) during the six years from 1st January 1818 to 31st December 1823.

Description of Crime.	Total.
Ill-treatment of Slaves and Hottentots	4
Lodging false complaints	6
Assault	2
Wounding	1
Disobedience of District Orders	8
Breach of the Papt Laws	4
Neglect of Duty	3
Horse, Sheep, and Cattle Stealing	68
Vagabondizing and Cattle Stealing	14
Theft	2
Selling another person's property	1
Illegal detention of Hottentots and their cattle	3
Issuing " Good Fors "	1
Harbouring runaway slaves	1
Ill-treatment	1

The above is an abstract of the " Return of Criminal Causes " furnished by the Secretary to the District of Worcester.

(Signed) JOHN GREGORY.

[Enclosure 29 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Deputy Landdrost and Heemraden at Clanwilliam during the four years from 1st January 1820 to 31st December 1823.

Description of Crimes.	Total.
Ill-treatment of Slaves and Hottentots	2
Disorderly Conduct	1
Assault	1
Resisting Officers of Justice	1
Disobedience of District Orders	2
Insolence and Abuse	4
Breach of Engagement between Master and Servants	3
Ill-treatment of European Indentured Servants	2
Desertion of European Indentured Servants	10
Theft	13
Horse and Sheep Stealing	8
Desertion of Hottentots	3
Harbouring deserted Hottentots	1
Rescuing Cattle	1
Forgery and Fraud	1

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary to the Sub-Drostdy of Clanwilliam.

(Signed) JOHN GREGORY.

[Enclosure 30 in the above.]

Return of Crimes of which Individuals have been convicted by the Court of Landdrost and Heemraden in the Cape District during the four years from 1st January 1820 to 31st December 1823.

Description of Crimes.	Total.
Ill-treatment of Slaves and Hottentots	2
Making false complaints and accusations	11
Disorderly and riotous conduct	15
Assault	13
Wounding	2
Disobedience of District Orders	4
Breach of the Papt Laws	3
Insolence	2
Petty Theft	11
Desertion	28
Desertion and Petty Theft	4
Harbouring runaway Slaves	7
Encouraging servants to desert	1
Illegal detention of Hottentot Children	2
Nonfulfilment of agreement with Hottentots	1
Setting fire to Brushwood	1
Releasing Persons condemned to work in irons	3
Riding over two Soldiers	1
Breach of the Game Laws	1

The above is an abstract of the "Return of Criminal Causes" furnished by the Secretary of the Cape District.

(Signed) JOHN GREGORY.

[Enclosure 31 in the above.]

Translation into English of *Code of Criminal Law, as comprised in the Second Book of a Work on the Laws of Holland* by JOHANNES VAN DER LINDEN, LL.D., by P. B. Borchers. Printed at the Government Press, Cape of Good Hope, in 1822.

[Enclosure 32 in the above.]

Trial of Christiaan Philip Zinn for Falsification and Plagium in having made a fraudulent return to the Registry of Slaves.

Records held before His Honor the Chief Justice Sir Johannes Andreas Truter, Knight, and the Worshipful the Court of Justice of the Settlement the Cape of Good Hope and the Dependencies thereof, in a case of His Majesty's Fiscal D. Denyssen, LL.D., Ex Officio Rehearer in a criminal case, of a sentence of the sitting Members from the Court, bearing date 20th June last, *versus* Christiaan Philip Zinn, Defendant in said case, on

Thursday the 3rd July 1823.

At 10 o'clock A.M. in the Court Hall.

All the Members present.

His Majesty's Fiscal, D. Denyssen, LL.D.

In order, in a case of rehearing, to attend to a claim and conclusion being made thereon to answer and further to proceed pending in Court.

H. M. Fiscal Denyssen, LL.D. refers himself to the investigation effected in the first instance, being of the following purport:—

Records held before Wm. Hiddingh, Esqre., LL.D., and J. C. Fleck, Esqre., Commissioned Members from the Worshipful the Court of Justice to this Government, in a case of H. M. Fiscal Ex Officio Prosecutor, criminally *versus* Christiaan Philip Zinn, Defendant in person in the aforesaid case, for falsification and plagium, on

Friday, the 20th June 1823.

The Court having opened with the usual ceremonies, and

the Deputy Fiscal J. J. Lind, LL.D., and the Defendant in person, having entered the Hall, the following exhibits were made by the Fiscal:—

1. The Indictment, together with the preparatory Informations.

2. Deed by which it appears that the Indictment had been communicated to the Defendant in proper time.

3. A List of the Witnesses.

The Indictment being of the following purport:—

Indictment in a case of H. M. Fiscal, *ex officio*, *versus* Christiaan Philip Zinn, Defendant in person.

Whereas it has appeared to H. M. Fiscal from the preparatory Informations,

That you Christiaan Philip Zinn having in the month of January of the year 1821 married to the widow of Hendrik Tobias Moller, became the possessor, by that marriage, of the slaves belonging to said widow, which slaves were in consequence transcribed as your property in the Slave Registry Department.

That on the 19th March 1821 you called at the Slave Registry Office, and reported for Registry as your property the child Martha, daughter of the female slave Regina, which last mentioned became your property through marriage with the Widow Moller, and this was done by you notwithstanding said Martha had already long before obtained her freedom, by a manumission from the Widow Moller. That besides this, instead of stating the real date of birth of the child Martha, at the Slave Registry Office, you had positively reported her as much younger, with the apparent view to cause the said child Martha to be plunged into Slavery, notwithstanding the distinct desire of your wife, and the enacted Laws had declared her to be free. That further you had mortgaged the child Martha, together with her mother Regina, (by a deed of Mortgage,) on the 2nd August 1821, and such in the stead of the female slave Dina, for a sum of twenty-four thousand guilders, due by you by a notarial bond in favor of David George Anosi, and that said child Martha was also decreed to be saleable, and was to have been sold by the Sequestrator to this Government as a Slave, had not the child Martha's freedom transpired.

By all the above stated circumstances you the said Christiaan Philip Zinn have become subject to the accusation of Falsity and plagium, which crimes the high dignity of His Majesty's Government and the inviolability of Justice demand that shall be punished according to the Laws.

Fiscal's Office,
June 17th 1823.

(Signed) J. J. LIND, Deputy Fiscal.

The ex officio Prosecutor finally exhibits,

4. The Interrogatories to be replied to by the Defendant in person.

After which the presiding Sitting Members communicated to the Defendant in person, that respecting the accusation contained in the Indictment, the Interrogatories exhibited in judicio would be read to him, together with such further questions as the judge would deem necessary.

The said Interrogatories having been read to the Defendant, he answered to the same, as noted in the margin of each question.

What is your name, of what age are you, where were you born, where do you live, and what is your profession ?

Reply. Christiaan Philip Zinn, 52 years of age, born in Saxony Eisenach, residing in Cape Town, formerly a shop-keeper, but at present of no profession.

Do you acknowledge to have committed yourself to the crime mentioned in the Indictment ?

Reply. No.

The Defendant in person having denied the accusation made against him, the Court proceeded to the hearing of witnesses, for which purpose the witnesses hereafter mentioned have been sworn in successively.

1st. Ryno Johannes van der Riet, old 65 years, the Sequestrator, who after having administered the oath, declared :

Now some time ago was lodged at the Sequestrator's office a sentence in favor of D. G. Anosi, against C. P. Zinn, in which sentence among other things the female slave Regina with her

child Martha had been declared saleable, by virtue of which the sale of them had been announced, afterwards appeared at the sequestrator's office one of the family of the late wife of Zinn, producing a writ from his said late wife, that said child Martha was free, which document was transmitted by me to His Majesty's Fiscal; in the meantime the sale of the child Martje was put off. After that I called at the Registry Office, and was informed that after Zinn's marriage Regina's child Martha had been enregistered in his name, and was informed afterwards that Zinn had reported the child Martha to be younger than she actually was.

The note or document having been shewn to this Deponent, (the note bearing the exhibition of the 4th February 1823), and being asked if it was the same alluded to in his affidavit, was answered with yes.

Advocate De Wet requested leave to assist the Defendant, which being granted, he put the following questions to witness :—

Who was the person that brought you the writ (or note) of the freedom of the child ?

Reply. I do not recollect the name, it was the same person who brought the note to H. M. Fiscal.

Who was the person that informed you the child was reported younger than it actually was ?

Reply. The late wife of Zinn herself.

The Defendant questions Witness :

Do you recollect having caused my immoveable property to be publicly sold in the month of February last ?

Reply. Yes, by virtue of a sentence from the Court of Justice.

Do you recollect that a person by the name of Leibbrandt became purchaser of the landed property for *f*40,000 ?

Reply. This will appear by the articles of sale.

Do you not recollect that this very Leibbrandt had shortly before offered you *f*45,000 ready money for the said landed property ?

Reply. No.

Do you not recollect of my having penned a letter to the Chief Justice in which I complained against you of neglect of duty ?

Reply. I do recollect perfectly well you wrote a letter to the Chief Justice, but whether the sentences mentioned by you appear in the letter I do not know, but it is certain you had referred to Mr. G. H. Meyer, who had been at the Chief Justice, together with the Interrogator and myself, but Mr. Meyer fully denied what you had stated, and after a summary investigation by the Chief Justice, he declared to you that although leaving you at liberty to act as you might be pleased, nevertheless he was bound to say that your complaints were groundless.

Do you bear any revenge towards me ?

Reply. I am never angry with any person, and in my opinion I act in conformity with my duties.

Are you the only Informer ?

Reply. This I have already stated.

Fiscal Lind asks witness :

Did Zinn's wife say anything respecting the registration of the child ?

Reply. Yes, that she wished to give the child free from the very day of its birth, and for that reason did not report the same for registry.

2nd. Christiaan Cerf, old 31 years, born in this Colony, who after the oath had been administered to him deposes as follows :—

Some time ago the female Slave Regina of C. P. Zinn called on me, with the information that she and her child Martje were mentioned in the *Courant* for the purpose of being sold by the Sequestrator, and that her child Martje was made a present of to her previous to her mistress's marriage with C. P. Zinn, nay even when she was a widow, and also given her a note that the child was free, as also that her Mistress told her that she would not report the child Martje for registration, and that on this occasion she gave me the note, requesting me to prevent the sale of her child. In consequence hereof I applied to the Registration Office, and communicated the circumstances to Mr. Roselt, who told me that in that case Zinn had made a false report ; from thence I went to Mr. Advocate Smuts, but he not being at home, I related the case to his clerk Van den Burg, who advised me to wait on the Sequestrator, which I did accordingly, taking with me the said note. The Sequestrator

then told me that he would take care the child would not be sold. From thence I went to said Zinn, related to him the foregoing circumstances, and asked him whether he would enfranchise the child, and that I would pay those expences, but to this said Zinn said that he would not do it, because the proofs were not sufficient enough. Upon this I again applied to Mr. Roselt, who referred me to the Fiscal, to whom I communicated the case. The note produced by this witness at the Fiscal's Office having been shewn to him, and asked if it was the same alluded to in his affidavit, he answered he could not say whether it was the same, as he cannot write.

Questions by the Defendant in person to Witness:—

Were you the first Informer of this case ?

Reply. Yes.

Were you not formerly a slave of Jan Koetzee ?

Reply. Yes.

Are you at present a Christian, and are you confirmed ?

Reply. Yes.

By what means have you obtained your freedom ?

Reply. I purchased my freedom for rixdollars 1200.

Are you of Regina's family ?

Reply. Yes, she is my cousin.

How did you become the possessor of the note ?

Reply. She gave it to me.

Had you the note with you when you waited on me ?

Reply. No, the Sequestrator had it at that time.

Why did you not produce the note to me ?

Reply. Because the Sequestrator kept it.

Did my late wife also see the note ?

Reply. I did not shew it to her, but I had spoken to her about it, and she told me she had given the child free.

3rd. Helena de Cerf, old 29 years, born in this colony, who after the oath had been administered to her, deposes as follows:—

I know nothing about the case in question than that the child Martje was born out of her mother Regina at that time a slave of the Widow Moller, who afterwards remarried to C. P. Zinn, on my birthday, which took place on the 22nd July 1819.

Question by the Sitting Members :—

Do you know anything about the freedom of the child Martje ?

Reply. The Mother told me that she was free, but Mrs. Moller never told this to me herself.

The Defendant in person asks this Witness, Were you not formerly a slave ?

Reply. Yes, of Anna Catherina Koetzee.

In what manner did you obtain your freedom ?

Reply. My mother purchased my freedom for rixdollars 1700.

Are you not a relation to Regina ?

Reply. Yes, she is my cousin.

4. Klaartje de Cerf, old 25 years, born in this Colony, who after the oath had been administered to her, deposes as follows :—

The female Slave Regina of the Widow Moller, who married to the Defendant in person, told me, during the lifetime of her Mistress, that the Child Martje had been made a present of to her by her Mistress.

Questions by the Commissioners :—On what occasion had Regina related it to you ?

Reply. On occasion that I was with her. The child Martje having been shewn to Witness, and asked if this was the same child alluded to in her affidavit ?

Reply. Yes.

Questions by the Defendant in person to Witness :—

Were you not formerly a slave ?

Reply. Yes, of Miss Mietje Koetzee.

By what means have you become free ?

Reply. My freedom was purchased for rixdollars 1800.

Are you not of Regina's family ?

Reply. Yes, she is my cousin.

Question by the ex officio Prosecutor :—Do you know the date of birth of the child Martha ?

Reply. In July next the 22nd she will be four years.

Questions by Advocate De Wet :—Is there any proof of the birth of the child ?

Reply. I do not know.

From what circumstances do you recollect so well the birth of the child ?

Reply. I was in the house on the day the child was born.

5th. Petronella Voges, old 30 years, born in this Colony, who after the oath had been administered to her, deposes as follows :—

Shortly before the death of my uncle Hendrik Tobias Moller, and also after his death, his wife, my aunt, told me that she had promised to her husband to give the child Martje, whose mother is named Regina, free, and that in the lifetime of my Uncle a written Document would have been given to that effect, had death not so suddenly seized on him, which took place in the month of September 1819, and after his death my Aunt gave a note to the woman Regina purporting that her child Martje was free, which she herself told me.

Questions by the Defendant in person to Witness :—

Have you seen the note alluded to in your affidavit ?

Reply. No.

Have you heard that this note was shewn to me ?

Reply. I do not know.

Did my wife shew me the note ?

Reply. I do not know.

Advocate De Wet asks :—

Did the late wife of Zinn ever mention to you that her husband was aware of the freedom of the child ?

Reply. No.

Did you attend the wife of the Defendant in her last illness ?

Reply. One day before her death I was with her, but she was then unable to speak.

Did the Defendant's wife also mention to you anything with regard to a disposition appearing in her will ?

Reply. No, nothing else but that she had made her will.

The Defendant in person asks Witness :—During the time you had been with me, did you not perceive that my wife evinced every sort of love towards me ?

Reply. Yes, she called for you constantly, till her last breath.

The ex officio Prosecutor asks :—Do you recollect that the

wife of Zinn, during the latter end of her life, said, that there was no necessity for her to give the child Martje her freedom, as the proof thereof already existed ?

Reply. No.

6. Regina, old 26 years, born in this Colony, slave of C. P. Zinn, who, having promised to state the truth, deposes as follows :—

About two months after the death of my former master, Hendrik Tobias Moller, my mistress made me a present of my child Martje, then four months old, in consideration of my faithful services performed, as also because the child was sickly, and gave me a written paper to that purpose, which I kept in my possession. Afterwards my mistress Widow Moller married to my present Master, and after their marriage I lived in their house with my child Martje. Some time before a sale which was to be held at the house of my Master, I heard at the house that my name and that of my child were in the *Courant*, for the purpose of being sold by the Sequestrator. Upon this I called on Christiaan Cerf, and delivered in his hands the written paper which my mistress gave me, and requested him to do all he could to prevent the child being sold.

The Commissioner asks Witness :—From whom did you hear in the house that you and your child Martje were advertised for sale in the paper or Cape Gazette ?

Reply. My Mistress herself told me so.

As your Mistress gave you a written paper relative to the freedom of your child, what did your Mistress say to you on the occasion you and your child Martje were advertised for sale ?

Reply. That I was to enforce my right by virtue of the paper.

Do you know of your Mistress having spoken with her husband, respecting the child ?

Reply. I was not present myself, but my Mistress told me she had informed her husband of it.

Did you not on that occasion inform your Master that your child Martje was free ?

Reply. No, not to himself, but to his children.

For what reason did you not inform your Master of it ?

Reply. I thought it was not becoming in me, because my Mistress said she told her husband of it, and acquainted him with the circumstances, these are the reasons why I merely told it to the children.

The Defendant in person asks Witness :—In what year were you born ?

Reply. I do not know.

In what year and month did your former Master Hendrik Tobias Moller depart this life ?

Reply. I believe it was in the month of September, but cannot say in what year.

In what year and month was your child Martje born ?

Reply. In the month of June, but am not certain in what year.

In what year and month did I marry the Widow Moller ?

Reply. I do not know it with certainty, but I believe it was two years in last January.

With whom did you live at the time I married with your Mistress ?

Reply. With Horn the shoemaker.

How long did you live with the person mentioned by you ?

Reply. About four months after that time I lived with Willem Kirsten.

In what year and month did you come to live at my house ?

Reply. I do not know, but it was after the woman Dina was sold.

Was it not a year and longer after my marriage ?

Reply. I do not know.

Are you sure that my late wife, formerly Widow Moller, had given you a paper, that the child Martje was free ?

Reply. Yes.

In what year or month did it happen ?

Reply. I do not know with certainty.

Did you ever shew me the paper ?

Reply. No.

Did you ever mention to me that you had such a paper in your possession ?

Reply. No.

Advocate De Wet asks Witness :—At the time the child

was made a present to you, as you stated, were you still a slave ?

Reply. Yes, and I am a slave as yet.

The Ex Officio Prosecutor asks Witness :—Can you read and write ?

Reply. No.

Was your child Martje born on the birthday of any one of your family ?

Reply. Yes, on the birthday of Leentje de Cerf.

Can you state (or name) the month of the year ?

Reply. No.

The Defendant in person asks Witness :—Have I ever treated you or any of the other slaves severely ?

Reply. No.

The Witnesses named by the Prosecutor having been examined, the following documents were read to the Defendant in person :—

1. Extract from the Registers of the Registry Department.
2. Notarial bond passed in favor of D. G. Anosi by the Defendant in person, by which some slaves are mortgaged.
3. A further mortgage for the amount of said bond, namely the slave girl Regina with her child Martje.
4. Manumission of the child Martha.
5. Certificate of the Revd. Mr. Kauffmann.

The Sitting Members do first decree and convert the warrant of summons in person, bearing date 10th June last, against the Defendant, in a warrant of arrest; further declaring the examination of this case to be at an end, and direct the Prosecutor to commence forthwith with his claim, and to take such conclusions as he shall deem advisable.

Worshipful Gentlemen!—The crime now imputed against the Prisoner is one of those transgressions which is so repugnant to the human heart, so that the supposition becomes improbable, that one human being making himself guilty of it, endeavours to deprive his fellow creature of that which he looks upon as the greatest blessing of his existence; who is the man that is not inspired with the desire of liberty when

born? What rational being does not feel a displeasure in oppression or the loss of liberty, considering it the greatest grievance which can be done to him?

The crime of Plagium (or of the *lex Tubia de Plagiarus*) that is to say, to plunge a free person into Slavery, is the subject of accusation against the Prisoner; few instances appear in the annals of this Colony respecting this crime, which is a proof that however corrupt the human being may be, there still are crimes which he dreads to perpetrate.

The circumstances of the accusation mentioned in the Indictment are briefly as follows:—

The Sequestrator to this Government addressed a letter to His Majesty's Fiscal on the 5th February last, giving information to the Fiscal's Office that a sentence was lodged with him in favor of David George Anosi to the charge of the now Prisoner, arising from a bond executed by him in favor of said Anosi amounting to Guilders 24,000, and that for said debt he had mortgaged, together with other Slaves, certain female slave Regina, with her child Martha. That the Sequestrator on carrying into effect said Sentence, had advertised the sale of the Slaves to the public, but however on a further reference, shortly before the female Slave Regina and her child, together with the other slaves, were to be sold, he received the information that the child Martha had already a long time before obtained her freedom from the then Widow Möller, who afterwards married to the Prisoner, and by which marriage he became possessor or proprietor of the Slaves belonging to said Widow Möller. After the said informations contained in the letter alluded to, (which has been already exhibited in *judicio*), had been duly investigated, it was found that the Prisoner after his marriage with the widow Möller had caused the slaves to be registered in his name and as his property, and also thought proper to cause to be registered as a slave a child already made free, namely the child Martha, who was not only registered, but was besides mortgaged by him, and was also declared saleable. Notwithstanding that the Prisoner was acquainted of the child being free, and although she was nearly two years old, still he called at the Slave Registry Office, and reported the child Martha as being born exactly within six months. *Vide* his return delivered

into the Registry Office. The Prisoner states positively that the child Martha was born on the 20th September 1820, on the very day that the child, if reported one day later by him, would have been free by virtue of the Proclamation of 26th April 1816. This did not suffice; the Prisoner wished to enjoy the benefit of it, and of having plunged his fellow creature in slavery, he mortgaged the child Martha, allowed her to be declared saleable, and would have witnessed the sale of a free person with eagerness had it not been discovered by a mere accident.

It will not be necessary to prove all those circumstances by detailing them, if your Worships will only peruse the documents exhibited in judicio by the ex officio Prosecutor, no denial of those facts can be established. All the Witnesses have moreover affirmed the said circumstances and documents as fully as possible.

The Prisoner has been accused in the Indictment of the crime of falsification and plagiarism, that is to say, he has been accused of having made a slave of a free person, who he was aware to be free, for the purpose of gaining by it.

The Prisoner cannot deny that this has been proved, his own document by which he had mortgaged the child Martha as a slave is now before your Worshipfuls. The Extract from the Registration Office; by which it appears that he reported the child Martha as a slave on the 19th March 1821 is also before your Honors, and the Sequestrator's evidence and those of the other Witnesses have proved that the said child Martha would have been sold as a slave, if her freedom had not been discovered, and thus fortunately the sale had not been prevented.

Besides the decree of the Law, the freedom of the child also appears from the private free paper of the Widow Moller, given to the Mother of said Martha on the 30th October 1819, which document had also been exhibited in Judicio by the ex officio Prosecutor.

What proof is therefore further necessary to substantiate and prove the truth of the accusation made against the Prisoner in the Indictment?

The Ex Officio Prosecutor is of opinion that he would uselessly occupy the attention of your Worships, by comparing at large

all the evidences of the Witnesses as also to make quotations thereof—they are all as yet fresh in your Worships' memory, and therefore your Worships will be able to judge in how far the crime charged to the Prisoner has been proved by those documents and other proofs exhibited by the *ex officio* Prosecutor.

According to the Roman Laws, which we adopt, the crime of Plagium was checked by severe punishment, nay sometimes with death.

It is a crime, the consequences of which occasion an incalculable injury to the state of mankind. Since years it has been attempted gradually to improve the state of slaves, and we now on the contrary behold the prisoner in this moment not only attempting to obviate this humane design, but also by committing the crime himself, plunges his fellow creature in the greatest misfortune and wretchedness upon earth, by making her his slave, and to alienate her for his own profits, in consequence of which, and according to the laws, he has deserved a serious punishment.

The *Ex Officio* Prosecutor considers superfluous to add anything further, he therefore confidently goes over to the following conclusion:—

For which and other reasons and means, if necessary to be adduced hereafter, the *Ex Officio* Prosecutor making his claim, concludes: that by sentence of your Worships, the Prisoner shall be condemned to be transported to New South Wales, or to any of the adjacent Islands, for the term of seven ensuing and subsequent years, and until an opportunity offers for his transportation, to be confined at Robben Island or other secure place, with condemnation of the Prisoner in the costs and charges of justice, or otherwise.

The Prisoner says for answer:—

Worshipful Court, as my conscience is an infallible Judge in my own case, and giving me the assurance that I am guiltless, I did not consider it necessary to take the assistance of legal counsel, nor will I occupy your Worships too long. If the accusation be grounded, in that case it ought to be proved in the first place, that the child in question, namely Martha, is older than the age at which she stands registered, not only,

but it must also be clearly proved that I knew the exact age of the child, and that I had intentionally reported her to be younger than I knew she was.

This not being sufficiently proved to the Judge, the remainder of the accusation falls to the ground of itself, namely, the mortgaging of the child in question for certain debts which I contracted, for, if I had a right to register her as my slave, of course I also had a right to mortgage her as such. For had I known that the child in question was free, I would certainly have provided against it. I might have made arrangements with the creditor, that it did not appear in the *Gazette*, as I could easily imagine the thing would otherwise become public. There was also no necessity for me to mortgage the child in question, together with her mother, as the condition required but one slave in lieu of Dina.

There is also another circumstance, namely, that my wife had signed a certain written paper, expressing her wish that the child in question should be made free. I heard only a talk of this paper but very lately, but never saw anything of it. Had it been the wish of my late wife to emancipate the child, why was it not inserted in the Testament, as she had included the mother in it, that after the death of the longest living she should be emancipated, but not the child; and why was not my wife heard, whilst alive, or why was no insinuation served on her? In that case she would have been obliged to make a declaration, and there would have been better grounds, by which I would have been saved all the difficulties and unpleasant circumstances. No person is able to prove the contrary, but besides, should that paper contain in itself a sufficient proof to make the child free, the registration in question can have no injurious tendency towards it.

But the great question is, whether that paper has not been antedated. There are good reasons for a careful inspection of the document to that effect; no person, but the Witness Regina, knows of that paper, no one but she knows when it was given her, but she is the mother of the child in question, and it cannot be demanded of her that she shall tell the truth on the subject.

By the Indictment it appears that I married to the Widow Moller in the month of January of the year 1821,

and that after a lapse of two months I reported the child in question for registry. This is therefore a clear proof that I have not been too eager to have the child registered, but on the contrary that I allowed two months to elapse, of which I might have profited. These months may perhaps make the exact difference in the age of the child. I declare solemnly that the child in question, as also her mother, did not live in my house at the time I effected the registry, and that my late wife told me that the child was born on the 20th September of the year 1820, and I had no reason to be doubtful as to that statement.

And I do declare, in the same solemn manner, that it was my wife herself who reminded me of effecting the registry of the child. If the child might have been born at an earlier period, in that case I trust your Worships will take into consideration that I had been deceived, and trespassed unintentionally.

In case the paper alluded to, granted by my wife, had not been antedated, in case my late wife had granted it whilst Widow Möller, or even at an earlier period, why has it not been produced at the Registry Office? In that case a Memorandum might have been taken of it. This would not have cost one skilling, and it would have been the means to prevent my transgressing ignorantly or becoming the dupe of deception. With regard to the affidavit of the Sequestrator, who I accused by a letter to His Honor the Chief Justice, this affidavit can be of no use, because I was ignorant of the written paper granted by my wife.

I humbly trust that what I have stated will be deemed sufficient to be declared pure and innocent of the criminal part of the accusation made against me.

The Commissioned Members having seen and examined the investigation held in this case, having heard the claim of the Prosecutor, as also the Prisoner's defence, and having attended to everything which deserved attention, or could influence them in any manner, administering Justice in the name and on behalf of His Britannic Majesty, do absolve the Prisoner from this instance, do further withdraw the warrant of arrest issued against the Prisoner, with condemnation of him in all

the law expences, and do authorise His Majesty's Fiscal to take such measures with regard to the just claims of the Child Martje as he may think advisable.

(Signed) W. HIDDINGH,
J. C. FLECK.

In my presence,

(Signed) J. P. JURGENS, 1st head clerk.

On this day, the 22nd June 1823, His Majesty's Fiscal D. Denyssen L.L.D. declared himself Appellant of foregoing sentence to the Full Court, which I attest.

(Signed) E. BERGH, 3rd Head clerk.

On the grounds of the said Investigation His Majesty's Fiscal made the following claim:—

By an advertisement of the Sequestrator, which appeared in the weekly paper of the 18th January last, notice was given to the Public that an executorial sale was to be held of a female slave named Regina with her child Martha, both stated to be the property of Defendant in person, Christiaan Philip Zinn.

This advertisement occasioned the discovery of an evil, which perhaps otherwise always would have remained concealed, namely the succession of crimes of the defendant, for which he now is prosecuted by me, on good grounds, as I presume.

The Mother of the child Martha, very justly alarmed on hearing that her child, which is free, would be sold together with herself as a slave, lost no time in applying to Christiaan Cerf (one of the witnesses in the proceedings), to whom she delivered a written paper, drawn up and signed in the own handwriting of the Defendant in person's wife, who lately departed this life, for the purpose of substantiating the proof of freedom of her child, and to be used as such, to prevent that dreadful misfortune.

This paper is dated the 30th October 1819, and is of the following purport:

“ I the undersigned do hereby acknowledge to have made free by these presents my female girl Martje.”

(Signed) Widow H. P. MOLLER.

Cape Town, October 30th 1819.

Said Christiaan Cerf did not delay in waiting on one of the Advocates for Counsel, how to proceed in this case, and was referred to the Sequestrator, to whom he delivered up the written paper before mentioned, with the result that the child Martha's sale was stopped and not reported in the Sequestrator's advertisement for the following week. The Defendant, well aware that this string was too feeble to be touched, acquiesced in the orders for not selling the child Martha, and perhaps this case would have been at rest, had not Christiaan Cerf, after having delivered up the private paper to the Sequestrator, also applied to me to report the intended sale of a free child as a slave.

On receiving the communication I considered myself bound, for delivering up the written paper to me, which was also done, besides which I received a letter from the Sequestrator on the 5th February last, copy of which letter was exhibited in the first instance by the Deputy Fiscal.

I cannot pass over the contents of this letter without begging the particular attention of the Worshipful Court thereto, as it contains circumstances by which the bad faith of the Defendant in person, and the untruth of his solemn declaration with which he concluded his defence for his pretended innocence in the first instance, are placed in the brightest daylight. The Sequestrator wrote as follows :

Sequestrator's Office,
Cape Town, 5th February 1823.

To Daniel Denyssen, Esq., His Majesty's Fiscal.

SIR,—Certain Christiaan Philip Zinn, on re-marrying with a Widow Moller, caused the slaves belonging to the Widow to be transcribed in his name at the Registration Office, among others the female Slave Regina, with her child Martha, which

circumstances he the Sequestrator became acquainted with the day before yesterday. Through the wife of this Zinn, "the slave child Martha was declared by her to be free, in a note which certain Cerf delivered for about 14 days, and which had been handed over to you. This she declared the day before yesterday, in the presence of her husband said Zinn, declaring also that the girl Regina had been bequeathed to her by her Parents, on condition that she never could be sold, but at her death, on paying a certain sum of money, should be made free. This woman also declared that she did not report the child Martha for registry, because the child must be free.

Both these slaves, Regina and Martha, after they were registered in his name, had been mortgaged by him by a bond in favor of David George Anosi, for guilders 24,000, together with two slaves more, Abraham and May, and they all have been declared saleable by Sentence dated 14th November 1822.

The day of the sale of the Slaves having been fixed on the day before yesterday, the slave Abraham was not present, and with regard to the slave May, Zinn said he was dead. The Sequestrator ordered him to take care that Abraham was present on the following day, (being yesterday), and to prove that May was dead, on which occasion the Sequestrator informed him that the female slaves Regina and Martha would not be sold, and that the necessary investigations would be effected with respect to them.

Yesterday morning said Zinn had the impudence of telling the people assembled to attend the sale, that it would not take place, which he also communicated to the Auctioneer Smit.

The Sequestrator received the information of the said Auctioneer, who he ordered to go to the house of Zinn instantly, and to inform the people that the sale would take place.

About 10 o'clock on the Sequestrator's going to the sale, he met a slave, who stopped him, and spoke to him in the following manner, "Sir, it was not my fault that I was not present yesterday, my master (meaning said Zinn) told me last Sunday evening (Abraham) (who I am) you better had go to some place or other in the country, and remain till you hear the sale is over," but I am now come to report myself. I do not wish to cheat you, sir, as my master is doing. The Seques-

trator ordered him to go with him, which he did, and said Abraham having come home, repeated in the presence of a number of persons, and in that of Zinn, what he told me, and which was not denied by him. Abraham was then sold for Rixdollars 2,250, to Willem Louw, living in the Keizer's or Heeregragt.

The Sequestrator begs leave to report these circumstances to you officially, and to accuse the said Zinn of having committed himself, by fraudulently registering free persons as his property, by mortgaging them for a private debt, by which free persons have been declared saleable, and so doing deceived the judge, for retaining and concealing of the Slave Abraham, and for not proving that the Slave May is actually dead.

The Sequestrator considers it superfluous to convince you of the difficulties he would have been involved in by Zinn, and by his having fraudulently registered, mortgaged the Slaves Regina and Martha, and by their having been declared saleable, to have been the cause that he would have sold free persons, had he not received timely information.

The Sequestrator therefore begs leave to bring the circumstances to your cognizance, with request you will be pleased to cause Zinn's conduct to be judicially investigated, more especially so as the Sequestrator is informed that the age of the female Martha is reported to be younger at the Registry Office."

The Sequestrator has the honor to be, sir, &c.

(Signed) R. J. VAN DER RIET, Sequestrator.

In the meantime I applied at the Registry Office for the necessary informations with regard to the registry of the child Martha, and it was only after I had received those informations that I fully became acquainted with the culpable conduct of the Defendant in person.

I deem it necessary in stating the circumstances relative thereto, to follow the order of the times. I therefore, Judges, commence to fix your attention more especially to the time of the birth of the child Martha. She was born on the 22nd July 1819, as stated by two impartial witnesses on oath, namely Helena Cerf and Klaartje Cerf, adding the very striking

reasons of their knowledge, because it was the birthday of one of these sisters, namely Helena Cerf, to which Klaartje Cerf added another reason of her knowledge, being of no less importance, because she herself was present in person when the child was born; the evidences of these witnesses are considerably strengthened by that of a similar impartial witness on oath, Petronella Voges, who states that her late uncle Hendrik Tobias Möller, the late husband of the recently deceased wife of the Defendant (and who, *quod notandum est, vide* the *Courant* of 18th September 1819) departed this life on the 14th September 1819, was still alive at the time of the birth of the child Martha. This witness also adds the following very observable circumstance, that her said Uncle had it in contemplation to make the child Martha free, and to grant a written paper to that effect, which he certainly would have done, had not death so suddenly seized on him.

Add to this the deposition of the Mother of the Child Martha, the female Slave Regina herself, who, to the question of the Deputy Fiscal "was your child Martje born on the birthday of one of your relations?" answered "Yes, on the birthday of Leentje de Cerf," which is very correct with what she had already stated before, that the proof of the freedom of the child Martha was granted to her by her Mistress about two months after the death of her former Master Hendrik Tobias Möller, and that at that time the child Martha was about 4 months old.

The difference of one month more or less in the statement of a Slave who confesses that she cannot count, and scarcely knows the names of the months, and who can only remember the time of each occurrence from several circumstances which occurred at the same time, is therefore very excusable in a Slave so circumstanced.

It is therefore a proved deed that the child Martha or Martje was born on the 22nd July 1819. With regard now to the written paper given by the late wife of the Defendant when the widow of Hendrik Tobias Möller, on the 30th October 1819, to the slave girl Regina, although the authenticity thereof has been made doubtful by the Defendant, (yet as I presume, with a beating heart,) in his defence in the first instance, still the authenticity thereof can be doubted as

little as the period stated of the birth of the child Martje can be questioned. This widow herself told witness Petronella Voges, that she had given a proof to Regina that *her child Martje was free*; she told the witness Christiaan Cerf that she had made the child free; it also appears that the writing of that paper was nothing else but the mere fulfilment of the will of her late husband Hendrik Tobias Moller, who, had his life been spared longer, would have given that proof of freedom to the Mother of Martje himself; but whose unexpected death made the execution of his will incumbent on his wife and widow. She herself, after the child was advertised for sale in the paper, encouraged the mother Regina to seek her right, (vide Regina's evidence); did not she herself, after the written paper was given to the Sequestrator, (by virtue of which the sale was put off), openly acknowledge to the Sequestrator the authenticity of that document? did not she declare, in the presence of her husband, (the Defendant) to the Sequestrator, that she had not registered the slave child Martha, because she was free?

This, Worshipful Gentlemen, is a third circumstance which is well deserving of your particular attention. On the 21st January 1821 the Defendant married to the Mistress of the Slave Regina, on that day the child Martje was already one year and six months old within one day, and yet she was not reported for Registry as a slave, which the wife of the Defendant acknowledged to have omitted intentionally, because the *child was absolutely free*.

Referring to the letter of the Sequestrator already quoted, and the conclusion of his deposition, it will sufficiently appear that she stated those circumstances at the Sequestrator's office, in the presence of her husband.

This circumstance connected with the enactment in the Proclamation of the 26th April 1816, expressly ordering "That no infant born subsequently to the date of that Proclamation shall be recognized as Slave, unless the birth of such infant be duly registered, as prescribed by the fourth article of that Proclamation, within six months after the birth of such infant," it will be found, that even had the wife of the Defendant not taken that measure of granting a written paper on the 30th October 1819, that she had made the child Martje free, and by

delivering that paper to the mother, even without that the child would have been irrecoverably free, from the day of her having attained the age of six months, that is from the 22nd January 1820, she was free, and consequently one year, less one day, previous to the marriage of that woman with the Defendant, had been in the indisputable possession of her freedom.

In the proclamation to which I just now referred, it having been ordered to all slave proprietors, in case of changes of property of slaves, to report such changes to the Registration Office, and to take out a certificate thereof, the Defendant therefore, in compliance with the said Proclamation, caused the names of the Slaves which became his property by that marriage to be transcribed at that office, as his property. It will appear to the Judge, by the certificate granted in this respect, and exhibited in the first Instance, that the Defendant in effecting that transcription, caused the mother of the child Martje, namely Regina, to be registered, but made no mention whatsoever of the child Martje, who not having been registered, therefore of course could not be transcribed in his name, and which at that time had not yet been reported by him as an infant.

A lapse of nineteen days had to expire first, before he could venture to execute that deed. On the 19th March 1821, the Defendant thought proper, to report the child Martje, or Martha, as an Infant at the Registry Office to be taken on the Books among his Slaves; and to do this with success he stated at that office that the child was born on the 20th September 1820. He therefore delayed the pretended birthday of the child as much as was in his power, for had he made the report but one day later, the child could not have been enregistered and any longer recognized as slave.

If it is asked why the Defendant did not register the child at the same time as he caused the slaves of his wife to be transcribed? he shall know the reasons better than any other person, but it is not improbable that having merely requested the general transcription of his wife's slaves in his name, he afterwards discovered that the child Martje had not been registered. Such a discovery must necessarily have been accompanied by a development of the reasons why that

child was not registered, because it was in compliance with the desires of the former proprietor, the late Hendrik Tobias Möller, who had made it free, but this reason was not sufficient to satisfy the avarice of the Defendant.

He therefore did not scruple in order to evade the consequences of the non-registry of the child, to seek refuge in a falsification, which containing in itself the acknowledgement of the Defendant that he knew what age the child had, is therefore considered and looked upon by me as an undeniable falsification.

He stated the child was born on the 20th September 1820; so positive a statement can rest on nothing else but on a positive knowledge. And it now afterwards appearing that the child was already one year and about two months old at the time he reported the child to have been born, his statement cannot be considered as anything else but an *intentional* false one.

This was also considered as such by the Defendant when in his written defence in the first instance he had taken recourse to a *solemn* declaration (instead of giving proof) that in making the report of the time of the birth of the child he had erred as to the exact date, and that the error was occasioned (N.B.) by the deceiving statement made by his wife; his own words are "I declare solemnly that my deceased wife told me that the child was born on the 20th September 1820."

That this solemn declaration is as false as the report itself made by him might be sufficiently proved by all the circumstances, if that proof was resting with me, as to the falsity of the solemn declaration made by a person under the accusation of falsification.

I would then beg to fix the attention of the Judge

(a) To the certificate of the registration itself, in which the age of the Child is entered as stated by the Defendant, without any remarks or reference to the knowledge of his wife, which must have given cover to him, by which it therefore could not be otherwise but that on enquiring of the Assistant Inspector as to the true age of the child, (the Defendant having stated to him the 20th September 1820 to be the birthday, without assigning any reasons for his knowledge) it made that impression on him that he expressed himself instantly, saying, in that

case Zinn has made a false report (vide evidence of Christiaan Cerf).

If such a proof could be demanded of me, I would beg leave to point the Court's attention to

(b) The proofs at hand with regard to the conduct of the Defendant's wife herself, by which, I dare to say, it becomes utterly impossible that she could have been able to make such a statement to her husband as he now thinks proper to make for her; to the written paper given by her to the woman Regina, the authenticity of which she acknowledged to the Sequestrator, as she herself also declared to the Witness Petronella Voges, to have given such paper or proof of the freedom of Regina's child to the mother, and to the witness Christiaan Cerf, *that she had made the child free*, to her confession to the Sequestrator that she had not reported the child Martje because she must absolutely be free, and *quod bene notandum est*, to her similar confession that the child had been reported much younger than it actually was. This, Judges, she also acknowledged to the Sequestrator, *vide* the answer to the query "who told you that the child was reported younger than it actually was?" the answer given was, "The late wife of Zinn herself." This deposition of an official person with regard to what had occurred in the execution of his public duties, will, being added to the other evidences, in some measure enable the Judge to consider to what mean and contemptible measures the Defendant had recourse, and was obliged to seek refuge in, to rid himself, if possible, from criminal prosecutions; for that purpose he stained the memory of a dead person with disgrace. Therefore he accused his own wife, who cannot defend herself from her grave, of intentional falsity.

I stated in the premises that the falsity of the Defendant's statement that the day of birth of the child was told to him by his wife to have been the 20th September 1820, might appear from all those circumstances, if the proof for that falsity was resting with me. I shall presently demonstrate from the Laws that this proof is not laid on my shoulders, but I must, however, now submit to the Court's consideration the conduct of the Defendant himself. He exonerates himself by the plea of an error. How is it possible, worshipful Gentlemen, to suppose such an error? Did not the Defendant know his

own slaves? and if he had known them, is it possible in that case that he would have mistaken a child of twenty months to be but six months old? Had this child received a defect from nature, by which it appeared so young? O no Judges! the child itself was produced in Court, and the contrary might have appeared to Commissioners; but he says before the child was registered I had not seen it; this cannot be supposed, Judges, for on the 19th March 1821 he was then already married nearly two months; but admitting this, did he not then see the child afterwards, and why did he not then afterwards redress the error; for he was already married two full years, the slave girl Regina had lived in the house of the Defendant for upwards of a year, together with her child Martje, and also performed domestic work, before I became acquainted with the case, and he was called to an account for his so-called error. Had not the Defendant, by having kept a silence of two years, and by the untrue statement by which he plunged a free child in slavery, sanctioned and given cover to his said statement? was he not obliged afterwards to redress his error, if he had really erred? and is it not a too striking absurdity to endeavour to hold out that he does not know it better but the Child Martje was born on the 20th September 1820? It is striking, and deserves the attention of the Court, that the Defendant during the examination made numerous cross questions to the girl Regina, principally tending to infer from them that he did not know the child Martje till a year after his marriage, that he had not directly asked her whether he had seen or did not see the child at the time of his marriage or shortly afterwards? for he had but once occasion to see the child to be convinced that it was not so young as he had reported it. This he did not ask her. It also appears to me that such an examination by the Commissioners has been considered useless and irrelevant, but however, if the Judge in the first instance had thought it proper to make an investigation as to this point, the girl Regina would probably have said that on the afternoon of the day of the marriage of the Defendant, she and her child Martje spent the whole of that afternoon at the house of her new master and mistress, which she stated to me afterwards at my office on the 30th of June last, and that she had also been seen by her Master. That at

that time the child Martje could walk alone, that she afterwards successively, as often as she paid her wages, did it chiefly in the presence of the Defendant, and that on those occasions the child Martje was always with her; and finally that about the end of the year 1821 she lived with her child at the house of her Master, and performed domestic work.

And had it been asked to her, which is done often to witnesses, whether she had been applied to in any manner to give an unsincere deposition, she would also have been able to say, what she stated at that time to me at my office, namely that the Defendant subsequent to her having been summoned, to give evidence, caused her to come before him in the presence of J. B. Hoffman, when J. B. Hoffman asked her "If she knew the persons who were to give evidence, besides herself, which was answered to by her Master, by stating the names of Miss Hommering and Miss Voges, after which her Master, as stated by her, in the presence of J. B. Hoffman, endeavoured to persuade her to state to Commissioners that her child Martje was one year younger, but which she stated to me she had refused to do.

The Defendant availing himself for his own advantage of the circumstance that his wife is dead, has expressed his grievance that his deceased wife was not heard while alive, or for not having served an Insinuation on her, that she might declare herself. But she did declare herself to the Sequestrator very plainly, and was not the evidence of the Sequestrator taken? Besides, Judges, I did not intend to catch the wife of the Defendant in a snare, and I look upon her as not deserving the aspersion thrown on her memory by the Defendant. To bring the wife of the Defendant to the test of giving a Judicial Affidavit whether she had or had not stated to her husband that the child Martje was born on the 20th September 1820, would have been to spread a double snare for her. She would have been obliged either to criminate her husband, the Defendant, by a denial, or herself by an acknowledgement, and in the latter case have exposed herself, besides, to the accusation of perjury and false evidence:—a person placed in that dilemma, even if alive, would have never been called upon by me to give evidence.

It will therefore be sufficient, Worshipful Gentlemen, that

the Defendant has not been able to substantiate his solemn declaration by any proof whatever, even not by a single shadow of proof, and still he is the person who should bring forth that proof, and that he is *ex superabundanti*, by chiefly all the existing facts and circumstances evinced, that he had solemnly declared a public and intentional untruth, an untruth which he well knew to have been the only feeble supporter on the border of the gulf in which he saw himself plunged.

I said a little ago, that the Defendant is the person who must bring forward that proof.

No one need be astonished as to this my system, it is grounded on the Laws, and I have frequently held it out with success in this Court Hall. The Roman Law, on which I ground my System, teaches that every person is supposed to be virtuous until he is convicted of the contrary. Therefore the proof that the Defendant is not virtuous rests with me, and as the Prosecutor I had readily taken upon myself that load, but what I now demonstrate is that I have fully fulfilled this my engagement, by proving that the child Martje was born on the 22nd July 1819, and as well by the express will of her Mistress as also by the enacted Law, (which does not recognize a child born over six months and not registered to be a slave), but on the contrary was declared to be free, and by having at the same time pointed out that the Defendant had caused that child to be registered at the Slave Registry Office on the 19th March 1821 as if the child was born on the 20th September 1820, by which he would have unlawfully plunged the very same free child in slavery, had not his crime been discovered.

These facts have been proved, and they have the unavoidable consequence that the Defendant has acted with bad faith, unless he had produced contrary proofs to exculpate himself. If the crime is of that nature that the quality of having been committed with bad faith is to be found in the perpetration itself, which is the case with all those acts which by their nature are regularly unpermitted with the crimes against Honor, life and death, in case the perpetration is proved the bad faith is supposed, and the Judge proceeds in consequence of that supposition, that supposition is the proof by which the Judge is obliged, be it said with respect, to condemn the

accused as long as he shall not prove by contrary proofs, or at least by apparent reasons, that he is really innocent.

In order now to ground this by precedents, I beg to appeal to those found in Lex 1, cod. ad Leg. Corn. de Sic. IX, 16.

This rescript of the Emperor Antonius shews that the perpetrator of a manslaughter, in order to be free from the punishment enacted for that crime, must produce proofs "non occidendi animo hominem ate percussum esse."

The same doctrine is taught in Lege 5, Cod. eod. and for what purpose this Law doctrine? because it must be unlawful from the nature of the case to deprive a man of his life, and therefore he who committed it must clear himself of the imputation of guilt. I also appeal to the Lex 5, Cod. de Injuriis. He who utters injurious language, although he speaks truth, by which he attacked the honor of the person, must prove "se non convicii consilio aliquid Injuriousum devisse;" otherwise by the said Law he is declared guilty, for no other reasons but those above stated.

I finally beg to refer to a precedent somewhat resembling the case of the Defendant, to be found in Lege 4, Cod. ad Leg. Corn. de falsis. A person had pretendedly availed himself of a false Rescript granted by one of the Roman (or Jewish) Emperors. There was no question of its being a false rescript, but the person who made use of it argued that he was deceived by a third person, who gave it to him to be a true and genuine rescript, and what was the decision of the Roman Emperor Alexander in this case? Qui deceptus est per alium si suam innocentiam probat et eum a quo accepit exhibit, se liberat. "He who insinuates to have been deceived by another, must prove his innocence, and besides this be careful that he can name his author."

If therefore the serving of Insinuations and putting questions to the wife of the Defendant in her life time had been necessary, he the Defendant should have made those insinuations and questions, he knew what was going about, the letter of the Sequestrator under date 5th February last will be a convincing proof to the Judge; his wife's life was long enough to enable him to provide himself with everything he required for his Justification; and what does he now allege

for this his justification? Nothing else but the solemn declaration that his deceased wife told him that the child was born on the 20th September 1820. But can he who stains the sacred right of liberty with falsification and plagium be heard on a solemn declaration? Is it not a discordance in the ears of every upright and righteous man, whenever such a person, with the mask of virtue on his face, endeavours to let the making of a solemn declaration, unsupported by no probability whatever, be of effect, as if he could attach by it his Judges to feel interest in his defence.

The counsellor whose enlightened knowledge is grounded on the quoted doctrine of the Romans, in case the Defendant applied to him with his bare solemn declaration, would not hesitate to refer him to the *proba innocentiam*; but the Defendant did not think nor could he think that it was a requisite proof. If necessary that in the quotation of the Laws the authority of Counsellors or Jurists should be added, in that case I beg to appeal to *Mattheus de crim. ad tit. Dad leg. Corn. de Sic. Cap 3, § 15*, and to *E. van Eck* in his *principia Juris, secundum ordinem, Digestorum ad tit. D. eundem § 13*, not to refer to any other.

I therefore consider it as a proved fact that the Defendant by having falsely caused the child *Martje* to be registered on the 20th September 1820 at the Slave Registration Office among the number of his other Slaves, had committed himself to the crime of falsification, a crime described by Law to be "a malicious secreting, suppression or imitation of the truth, tending to injure another individual" *vide Lex 15, L. 23, L. 31 D., L. 20, L. 22. Cod. ad leg. Corn. de falsis.*

The Defendant in perpetrating this act has also committed himself to the accusation of plagium, which is nothing else but a fraudulent *suppression of a free person or a slave belonging to another person* (*vide Matth. de crim. ad leg. Fabiam de Plagiarem § 2*), *Martje* being a free person, and having been converted to slavery by the fraudulent act of the Defendant. I therefore look upon this act, Worshipful Gentlemen, as a fraudulent suppression of a free person, although the chief mark of the act of the Defendant, the perversion of the truth, compels me to consider the Defendant principally as one of those who has made himself guilty of a very aggravating

falsification, and to introduce him as such to the notice of the Judge.

Indeed, the crime of the Defendant is highly aggravating, considering that it had a tendency to deprive in a wanton manner that right which, next to life, is dear to every one, the right of liberty, depriving that from an innocent child as yet unable to defend itself. The crime also becomes aggravating by the subsequently mortgaging the child Martha, together with her mother, for a debt of guilders 24,000, which D. G. Anosi had to claim of him. As long as the child Martha remained with him as the Master without any mortgage, the Defendant had it in some measure still in his power by some act or other to reinstate the child to her right to freedom, of which it had been so unlawfully deprived. But in consequence of having secured that child for the payment of a debt, he deprived himself of the very ultimate means to redress. The hypothecation took place on the 2nd August 1821, by a notarial bond, and 15 months afterwards, or on the 14th November 1822, the child Martha and her Mother were declared saleable by execution under a sentence of this Court. The Sequestrator would also have proceeded in execution, by virtue of the sentence, to dispose of her in slavery; in all this the Defendant would have indulged a perfect silence, had not the discovery of her freedom taken place, and thus prevented the evil which was threatening. After having made the first step it was continued in committing the evil until at last sight is lost so much of the right way that it becomes impossible to find it again.

I do not doubt but the reasons why I very humbly consider myself aggrieved by the Sentence passed by the Commissioners in this case will be sufficiently inferred from what I have argued in the premises.

It appears to me very clear, by the altered decree of summons in person into that of a criminal apprehension, (warrant of arrest) after the closing of the Investigation, and also by the order which my Deputy received from the Commissioners to proceed with making his claim, that in that very moment the case of the Defendant was considered very unfavorable by Commissioners. What therefore might have induced the Commissioners to alter their opinion is a matter of great

difficulty for me to trace, unless it was that the Defendant claimed from us to prove his bad faith.

In case this might have been the motive of the absolution of the Defendant from that instance, in that case I trust now to have convinced the Commissioners who gave judgment, as well as this full Court, that I have truly and really proved the crime of the Defendant, as I had to prove nothing else but his false and deceitful statement of the time of the birth of the child, which being proved, included in itself the supposed bad faith. Besides which, without it having been incumbent on me, I have fixed the Court's attention to numerous circumstances which preceded, accompanied, and followed his crime, all and every circumstance tending to place the bad faith of the Defendant in the brightest sunshine at noon.

It would take up unnecessary time to dwell on the defendant's defence made in the first instance, for save and except the proof demanded of me to establish the bad faith of the Defendant, it contains nothing, as I suspect, by which the attention of the Court may be occupied.

The question how the Defendant, (had he not acted bonafidely), could have mortgaged the Mother with the child, solves itself, because he wished to dispose of a female slave who stood mortgaged, namely the Slave Dina, he was obliged to make the fresh Mortgage in the room of the former appear considerable to the creditor, which could not take place more suitably, than by giving the mother with her child in the room of the female Slave, and besides, in the second place, because it is not customary in effecting mortgages and sales of slaves to separate the mother from such children who are still in need of the care and protection of their mothers.

The reason why his wife did not dispose in her last will with respect to the freedom of the child Martha (this is another objection of the Defendant) is very plainly the following: because she had already made it by her disposition *inter vivos*. For, had she not given a written paper to Regina that her child must be free, and had she not intentionally neglected to report the registry of the child, by which means the child was liberated from slavery of itself?

The *great question* (or important) of the Defendant, whether the proof of freedom of the child, granted by his wife, had not

been antedated, pray what does this important question signify?

If the paper had been written and delivered by her to Regina, and even if the date of 30th October 1819 did not appear in it, the child would have been made free notwithstanding. The manner therefore in which the Defendant again insinuated his wife in this paragraph of his defence of falsity, far from doing him any good, on the contrary develops more and more his bad and vicious disposition, by which the proof of his crime is corroborated in a similar manner as it is corroborated by his conduct with regard to the slave Abraham, of which the Judge will find an account in the Sequestrator's letter under date 5th February last.

The reason why the written paper of the freedom of the child had not been produced to the Registry Office is plainly this: because it was not necessary. The Defendant's wife intentionally omitted to have the child registered herself, for what purpose would the freedom of the child have been presented to that office; it would not have been accepted, as the child itself remained unregistered.

But why should I dwell on the defence of the Defendant, delivered in by him, its perusal is a mere nothing, and that the Defendant had no reasons on which he can ground his defence.

I conclude by humbly pressing on the Judge as to the necessity in which I as the Prosecutor and this Worshipful Court as the Judges are placed, by inflicting the punishment on the Defendant, should he be considered to have been convinced of his crime, to expunge that bad impression given by his example among those of our Inhabitants who otherwise might be inclined to follow his steps. How many free children, nay children of free parents, may not irrecoverably be plunged in the state of slavery by similar falsifications? and this should take place in an era that every one becomes more and more convinced of the illegality of the existence of slavery in general, and of the injurious consequences (also felt by the free inhabitants) attached to that state; and in those times that nothing is more heartily wished for than of witnessing the total abolition of that class, however in a manner so as not to infringe upon the rights of the subjects.

I therefore move for the annulment of the sentence given in this case by Commissioners, and further for a condemnation of the Defendant to be transported to New South Wales or other place for the term of seven following and ensuing years, and until a ship's opportunity may offer for his transportation, to be confined at Robben Island or other secure place, with further condemnation of the Defendant in the Law expences, or to such other punishment as to this Court shall seem fit.

(Signed) D. DENYSSEN, Fiscal.

Exhibitum in Judicio 3 July 1823.

The Advocate Johannes de Wet, having assisted the Defendant in the first Instance, says for answer :—

Honored Sir and Worshipful Gentlemen !

The wish for a good name, applause and honor, is as natural to men as the desire to obtain the state of perfection, *Gellert's Moral lessons, 14th lesson*; what must therefore be the feelings of a man who after having been in several quarters of our globe, taking with him from every place he quitted the most unequivocal marks of an exemplary good conduct, who after having spent upwards of 26 years in this Colony in an unstained life, who arrived in this Country as a stranger, and whose unspotted character alone gave him an opportunity of becoming connected with several respectable families in this Colony: that this very man, in an advanced age of life, and nothing being dearer to him than his good reputation and honor to be left to his children as the best patrimony, is now accused of a crime so dishonorable as well as abominable to every creature whoever he may be; but still more so in this man, because no revengeful desires, no sad poverty, the most common motives and causes of capital trespasses, could have instigated or prompted him thereto. How deeply must he not feel the so groundless accusations made by the Prosecutor, accusations which deprive him in the twinkling of the eye of everything which is dear to man, next to life, nay of that which every rational being whose heart is not deprived of all feeling will never hesitate to value more than life itself. What would become of an accused person if we do not live in a well organized Community, in which it is not sufficient to accuse a burgher

only, but in which he also finds an opportunity to clear himself of all aspersions and stains thrown on him. How would he be looked upon by his fellow citizens, if this your Seat of Justice did not exist, before which he can defend himself against the charges, and as hitherto to return to his kindred in peace, and also to appear in public with an unstained and unpolluted character.

Therefore with the conviction on his mind of not having committed himself in any manner, and fully sensible and confident that justice shall be done to him, he now appears before you, Worshipful Gentlemen, and begs to request to be allowed to occupy the precious attention of your Worships to deliver his defence through me his Advocate. I shall therefore prove clearly to your Worships that the crime imputed to my client, was with him in a complete ignorance of the circumstances which had taken place, an ignorance of which he could not extricate himself, even not with all the might of his power, an ignorance in which everything concatenated that he remained in it, and the mystery of which might have been easily revealed, had not the Ex Officio Prosecutor delayed full three months the prosecution of this case. Had he been made acquainted sooner than the 17th of this instant June with the disgraceful transgression of which he now is accused, as by the loss of his wife (whose demise took place on the 28th May last) he is deprived of a witness who would have been able to declare everything clearly, not only, but also might have easily contradicted those witnesses who had referred themselves to her. But as it is not otherwise now, nothing is left to my client but also in addition to the yet fresh wounds occasioned by the death of a dear beloved wife, to endure all the pangs which a criminal prosecution is for a man of honor. He however trusts he shall prove to your Worships that the Ex Officio Prosecutor's accusation is groundless and vexatious; and therefore now will confine himself thereto. Two Crimes have been charged to the Defendant :—

1st. Plagium,

2nd. Falsification.

1st. With regard to the first charge, there shall be no occasion to dwell long on it, because even supposed that the deed imputed to the Defendant is found to be true, even in

that case it cannot be the crime of *plagium*, for the idea of abduction always contains in itself a forcible or *sly* abduction of the person to whom it is done, in order further to dispose of him secretly in favor of a third person, for instance: Titus steals from Meerius his slave, keeps him in close confinement, in order that his Master may not know it, and afterwards sells him to Sempronius.

That these are the exact ideas of *plagium* is proved by the L. 6 § 2 D. ad Leg. Fabiam de Plagiariis, it expressing “*Lege Fabia caretur ut liber qui hominem ingenuum vel libertinum,*” &c., &c. By which it clearly appears that if this Law can be applied, there must appear principally:—

- (a) A forcible and sly abduction,
- (b) The confined state of the person stolen,
- (c) A secret alienation of the same to a third person.

This also appears in the “*Receptæ Sententiæ*” of Julius Paulus.

By this it is again seen that the Legislator, in making that Law, had the eye fixed on a sly abduction and secreting of the stolen person. Therefore in the Defence of C. Rabirius delivered by Cicero in § 3, was asked by this Orator: *An de Servis ALIENIS contra legem Fabiam RETENTIS?* The same idea is again therein contained. We find in every respect agreeing what has been noted by Counsellor Johannes van der Linden, in his Practical Law Handbook, Book II Chap. 6 § 3, saying “*Plagium* takes place when a man is *concealed* to deprive him of his liberty.” It is certainly worthy of no less observation that the celebrated Sir William Blackstone, in his commentaries on the Laws of England, Book the 4th Ch. 15th § 9, gives exactly the same definition of the crime of *plagium*. His words are “The other remaining offence, that of *kidnapping*, being the forcible abduction or stealing away of a man, woman, or child from their own country and sending them into another, was capital by the Jewish Law.” “He that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.” “So likewise in the Civil Law, the offence of spiriting away and stealing men and children, which was called *plagium*, and the offenders *plagiarii*, was punished with death. This is unquestionably a very heinous crime, as it robs the king of his subjects, banishes a man

from his country, and may in its consequence be productive of the most cruel and disagreeable hardships ; and therefore the common Law of England has punished it with fine, imprisonment, and pillory." By which it thus appears, which we observed but collaterally, that the ex officio Prosecutor is greatly mistaken by having demonstrated in his claim in the first Instance that this crime is not committed in the civilized Europe, because there are no slaves. What part of the limitation of plagium can now be applicable to the proceedings imputed to the Defendant ? Had he made himself forcibly master of a free person, or had he in the perpetration thereof availed himself of the assistance of others, and by so doing become a Socius Criminis ? It is so far from it, that the Mother and the ex officio Prosecutor, and in fact every one of the Witnesses who are acquainted with the case, did frankly declare that Regina and her child Martje came to the house of the accused without any force or having been compelled to it. Therefore, in the first place, that part of Lex Fabia, with regard to the Defendant falls to the ground of itself. But had the child not been concealed ? Was all communication with other persons forbidden to her ? and was she deprived of it ? Was she sold secretly, without any person knowing it, conducted to a foreign country, or to the interior of this country ? The contrary of all these circumstances appears by the Records before the Judge in the first Instance. Martje was always with the children of the Defendant, and was allowed to accompany her Mother if she thought proper to make visits to her friends or relations, in one word she was at full liberty, was daily in company with the persons in the house as well as with strangers, and she was therefore placed in the very opposite situation to that which the Law demands in persons by whom the crime of plagium can be committed. We trust that what we have stated thus far will be deemed sufficient to evince the Judge, that the lex Fabia which the ex officio Prosecutor made applicable to the case in question is directly contrary to all the rules of a sound explanatory skill. We therefore shall not trouble the court any longer for the present with the opinions of more Law Doctors on the subject, considering it quite unnecessary. We have therefore now come to the second point of the charge, namely that of Falsification.

In order to proceed in a more regular manner with regard to this point, it will be necessary that we first limit ourselves to what is taught on this crime, in order after a development of those requisites to put to the test thereof the case in question, that it may afterwards appear in how far the pretended delict is corresponding with it, and in how far the same is deviating from them and consequently contrary thereto.

1st. With regard to the crime of Falsification, the Law Doctors are pretty consonant. In the Roman Laws we find noticed with respect to this that falsification is "*fraudulenta veritatis imitatio vel suppressio in prejudicium alterius facta.*" It will be seen from those quotations that to prove falsification it is principally required that the most clear proofs are existing of the *dolus* of that act by which it is argued that falsification has been committed, and as now by the much celebrated German criminalist Gallus Aloys Kleinschrod, in his *Grund begriffe und Grund wahrheiten des Peinlichen Rechts, Erster Theil, Zweytes kapitel 14 §* it has been laid down "*Dolus ist der Entschluss zu einer handlung, desen Geselz zwidrigheit man vollhommen, und deutlick einsiet.*" The first Philosopher Emanuel Kant, in his *Metaphysische Anfangs grunde der Rechtslehre* is also of the same opinion. The afore quoted counsellor Johannes van der Linden, in his said judicial handbook or companion, after having given a description of falsification by saying "that it is a design done intentionally, and the secreting of the truth, tending to the injury of another person," has not improperly laid it down, that to establish the crime of falsification, the requisites are of two parts:

(a) An intentional and criminal design.

(b) A direct injury to a third person.

Consequently that if the first mentioned requisite be wanting (which we humbly beg to say is the case in this instance) the second requisite must of course be of no use.

2nd. After these preliminaries, we shall now confine ourselves, agreeably to the intended plan, to the investigation, namely in how far as well from the preparatory informations, as by the Records held before Commissioners, and what further has been adduced in this case, it clearly appears that the Defendant had an intentional design, by concealing the

truth to act in prejudice of the interest of the slave child Martje, which concealment of the truth was, that he was well acquainted that the said child Martje was emancipated by his late wife, also that besides this he was aware that there is a Law by which the said child Martje, although she has not obtained her freedom by the Defendant's wife, would have been liberated from slavery, *Ipsa Jure* on account of that Law operating with her.

A. The first Witness, stepping forward to aggrieve the Defendant, is the Sequestrator Ryno Johannes van der Riet, who declares that on occasion that the amount of a sentence in favor of D. G. Anosi against the Defendant was to be recovered by the sale of Regina and Martha, who were mortgaged by the Defendant for that amount for which the sentence was passed, appeared at his office certain person of the family of the deceased wife of the Defendant, *nota bene* of the family of the late wife of the Defendant! Compare with this, worshipful Gentlemen, the evidence of Christiaan de Cerf, also among the records, and it will appear to your Worships that it was this very same Cerf who applied to the Sequestrator, and that this Witness is in no ways a relation to the Defendant. No, on the contrary he is a cousin to the slave Regina. A considerable misunderstanding certainly (to say nothing else on the subject) of the Sequestrator, but which shall presently explain itself much better in shewing to your Worships on what friendly footing the Sequestrator is with the Defendant, but let me return to the affidavit in question. This pretended relation to Zinn (however actually the cousin to the slave girl Regina) produced to the Sequestrator a written paper that the female slave child Martje was free, which paper the Sequestrator had forthwith transmitted to the *ex officio* Prosecutor. Afterwards he was given to understand that the child Martje was reported at the Slave Registry Office younger by the Defendant than it actually was. But from whom did the Sequestrator hear it? He says from the wife of Zinn herself. But Worshipful Gentlemen! would it be astonishing that the Sequestrator, who gives a deposition on oath that the free paper was delivered to him by one of the family of the Defendant, and yet it appears that Christiaan de Cerf was the person, also perhaps he now mistook the girl

Regina, Klaartje de Cerf, Helena de Cerf, or some other person to be the wife of Zinn, for if he could make such a mistake with regard to one person, how easily could it also not take place with regard to another. If we accept the whole of the deposition of this witness, without making any remark whatever as to its purport, would it even then appear that Zinn was aware of the freedom of Martje? barely and by no other proof, because the Sequestrator says that he heard it of the Defendant's wife. Oh! how unfortunate would we be if we had no judges by whom more proofs are required than the so much detested *hearsaying*, especially in the English Courts. No! we trust that this Court is composed of men who are too well skilled in Law cases that such saying would be considered a sufficient ground to dispatch from here a citizen, a father of a numerous family, for seven years to a foreign country, and to live all that time in a dishonorable banishment! But besides, the evidence of the Sequestrator is highly reproachable.

(a) Because his memory very clearly deceives himself, and which we will readily ascribe to his far advanced age.

(b) Because he cannot be considered an impartial witness, in consequence of a complaint made against him to the Chief Justice as to neglect of duty, whether the same was with or without ground.

With regard now of what has been said as to his memory, the circumstance which we just now proved respecting the person of Christiaan de Cerf will not only contribute thereto, but also what the Sequestrator further stated in his evidence, namely that the complaint of neglect of duty was found groundless by His Honor the Chief Justice, and our client declared to us and which we indeed are more inclined to accept as the decision of a prudent Judge, that in that case the parties had been referred to the common course of Law, and we have no hesitation whatever, at the request of the Defendant, fully to rely on the testimony of His Honor. Vide also the letter written to His Majesty's Fiscal.

Considering now the Sequestrator in the light of a partial witness, we do not lose sight that we are addressing your Worships, as knowing from very old experience the irritations

of the human heart too well not to accept everything for granted, which Valerius Maximus in his *Exempla Memorabilia* Lib. IX, c. 3, states: *Ira quoque et odium in pectoribus humanis magnos fluctus excitant.*

This will be sufficient with regard to this first Witness.

B. In order to prevent all prolixity we shall therefore take the evidence of Christiaan de Cerf, Helena de Cerf, Klaartje de Cerf, all relations to the mother of the child Martje, together, as also that of Petronella Voges, the Defendant's cousin, and will now limit ourselves in examining them together. They contain that the widow Möller told said Christiaan de Cerf that the child Martje was emancipated by her, which circumstance Helena de Cerf, Klaartje de Cerf, and Petronella Voges had heard from the girl Regina only; but none of these witnesses can state the least thing from which we must conclude that Zinn was acquainted with that manumission. It is true, after Christiaan de Cerf heard it from the Mother of the child, he went to Zinn and related it to him, but giving no proof to the defendant (as appears by the queries replied to), who having heard nothing of it from his late wife, did not trouble his head about that information, telling C. de Cerf that his statement was not a sufficient proof, an answer which every slave proprietor certainly would make use of, and which is also a strong proof that Zinn was in the bona fide idea that Martje actually was his slave, for how can it otherwise be explained that after the case had already become notorious he would still have persevered in his intention to cause the child Martje to be sold publicly; for by giving another definition to this would be to commit a laughable absurdness. Besides which we may not lose sight that in the depositions of these witnesses, containing nothing, they must still be looked upon as persons who, in consequence of their family connexions, may gain by their evidences, therefore the l. 10 D & b. 10 C. de Test. are to be applied to them. Nothing again appears from these evidences, on which the Ex Officio Prosecutor can build his system that the Defendant was aware of this manumission.

C. We shall now finally go through the last evidence produced by the Prosecutor in support of the grievances against our client. Perhaps an evidence elevated above all suspicion!

Perhaps this evidence will untie the bow, and spread the necessary light! But whose evidence is this? A female slave of the Defendant, the mother of the child Martje, who has been the cause of this prosecution. It is with regret and concern to find that the Ex Officio Prosecutor did not consider it worthy the trouble, for political reasons, as well as for the rules of Law, to follow the lesson of the immortal Montesquieu. Expressing himself in his *Esprit des Loix*, Tome II, Livre 12, chapitre 14, "On ne doit rien négliger, de ce qui mène à la découverte d'un grand crime, ainsi dans un état on il y a des esclaves, il est naturel qu'ils puissent être indicateurs, mais ils ne sauroient être témoins. Aussi l'Empereur Tacite ordonna-t-il que les esclaves ne seroient pas témoins, contre leur maître, dans le crime même de lèse-Majesté, loi qui n'a pas été mise dans la compilation de Justinien!" This may also be compared with l. 11 C. de Testibus, and l. 9 and l. 6 C. h. t.

Nevertheless the Ex Officio Prosecutor thinks it proper to summon Regina as a witness in this case. This slave now relates that her Mistress about two months after the death of her first husband gave to her, Regina, a written paper containing the emancipation of the child Martje, that her Mistress told her afterwards that her child would be sold, and that she must enforce her right by virtue of that paper. This is already extraordinary, the wife of Zinn herself was the ablest person to stop the sale of that child, for what reasons therefore was it delegated to her slave? for fear that the Defendant would illtreat her for it was also no reason, as the Judge will see by the affidavit of Petronella Voges, that between Zinn and his wife the strongest harmony was prevailing, and during her illness till her death always called for him. Regina further relates that her Mistress told her that the Defendant was acquainted with this emancipation, but she was not present when the information was given to him. Again, never did she tell to Zinn that Martje was free, but she told it to his children, for which she assigns the insignificant reason that she thought it was not her duty. She never did shew the free paper to the Defendant, nor did she ever mention to him that she was in the possession of such written paper.

Worshipful Gentlemen! by all these evidences it has been clearly proved that no proper notice was ever given to said Zinn respecting the freedom of the child, on the contrary, every effort has been used, and all means were taken together to keep the Defendant ignorant. In what a mysterious manner had not everything been conducted? How mysterious must not all this appear to every person? And can there be any better ground for the excuse of the Defendant than the circumstances contained in the several affidavits? We therefore confidently look upon it that it has been satisfactorily proved to the Judge that the Defendant was kept in full ignorance with regard to the existence of the free paper. We shall now proceed to the examination itself.

D. In how far the Defendant had committed himself, by intentionally evading the enacted Law contained in the Proclamation of the 26th April 1816, by virtue of which the child Martje was ipso jure free. In order now to make it acceptable the Ex Officio Prosecutor must prove:

(a) That the birth of the child unquestionably took place on the 22nd July 1819, and that there cannot exist any doubt about it.

(b) That this was known to the Defendant.

(c) That notwithstanding the Defendant had reported the birth falsely to the Registry Office to have taken place on the 20th September 1820.

Let us now, Worshipful Gentlemen, hear the Mother of Martje, for it may justly be supposed that the Mother of her child can recollect the best of all other persons its birthday. Several trivial circumstances are auxiliaries to her, and can be of assistance in strengthening her recollection, also much easier in this case, because Martje was the first born child, and what is now the declaration of the Mother herself? That her child was born in the month of June, but does not know in what year. The Ex Officio Prosecutor, undoubtedly at a loss by this answer, instead of asking her directly by what circumstances she recollected it, rather puts a leading question by asking her if Martje was not born on the birthday of one of her relations, and the slave Regina having previously heard the affidavits of Helena and Klaartje de Cerf, she answered

that Martje was born on the birthday of Leentje de Cerf, unfortunately forgetting that this took place not in June, but in July, and on the 22nd of that month, and this not only took place in the year 1819 but also in 20, 21, and 22, and yet the mother is unable to state any of these years with certainty.

It now appearing very clear that it is not yet so decided a case with the birth of the child Martje as the Ex Officio Prosecutor has been pleased to argue in his claim, it is therefore not wonderful at all that the wife of Zinn told him that the child was born on the 20th September 1820. We shall now proceed to the second point, namely whether the birth was known to the Defendant, and with respect to this we beg to ask with an unlimited confidence, how could it be possible? the Mother herself is unable to state the birthday of her child, at that time she did not live at the house of the Defendant, a full year expired after the marriage of Zinn with the widow Möller before he saw the girl Regina or her child Martje, their marriage took place in the month of January 1821. Two months afterwards Zinn received the information that Martje was born of Regina, and that she was not yet registered. This he effected instantly, which he did on the 19th March 1821. Could he at that time foresee that he would have occasion to mortgage Martje for a debt on the 2nd August of the same year? And what reasons could Zinn have to wait with the registry of the child had he known it sooner?

The largeness of the child could not have given rise to the idea that it was already two years or near that age. The child was extremely small for her age, which is still the case, and with respect to this I beg to appeal to those Judges who have seen her in Court. The Mother who might have given him some information or other in this respect was very secret with it, (vide her answers appearing in the Records). Could he in any manner suspect his wife's statement that the child was born on the 20th September 1820? did any reason exist for such a suspicion? Why does not the ex officio Prosecutor prove that Zinn was very well acquainted with the circumstance that the birth of the child took place at an earlier period, for the *onus probandi* is fixed on his shoulders. Can Zinn prove his innocence, worshipful Gentlemen, in a more

clear manner? Is it in his power? Is his denial capable of establishing proofs? Does not the Law say plainly: *Non probat qui factum negat cujus perverum naturam nulla est probatio* V. l. 2 D. & l 23 b. de Prob. & Præsumpt. Is the inference drawn by the Registry sufficient? Indeed the Legislators of our Law Book did not consider it so easy a matter. Read the *lex ult. c. de Probat.*

What a material difference between this and that which the Prosecutor wishes to be considered as sufficient proofs.

It also cannot fail of being observed by the attentive Judge, and to occasion some consideration, that Zinn, before the advertising of the sale of Regina and Martje, and which of course was to become matter of notoriety, that Martje was free, did not make the least attempt to prevent the discovery, which would have been very easy for him to do, by paying off the amount of the sentence before the advertisement appeared, numerous friends, nay his relations themselves, would readily have stepped forward, for to stick to the supposition that he was imbibed with the idea that it would continue as a secret would be an absurdity of itself. Not having been therefore sufficiently acquainted either with the freedom, or the exact date of the Child's birth, as is supposed by our party, those precautions became unnecessary of itself. Another circumstance which we cannot pass over unnoticed is that by virtue of an engagement on the 31st August 1816 Zinn has bound himself that in case he was to sell any of his slaves mortgaged to D. G. Anosi, he was obliged to substitute his or their place by other slaves or slave, and therefore mortgaged on the 2nd August, 1821, by a deed of hypothecation, two slaves (consequently giving one more than was necessary), and Martje was one of them. Had he known that the child was free, of course he would not have done it, only to give no cause of the case being discovered, therefore considering his complete ignorance as to the date of the real birth of the child to have been proved, there is no necessity for us of entering into any investigation whether he had intentionally antedated the date of birth to the Registry Office, which otherwise was proposed as the third point.

The Ex Officio Prosecutor in his claim in the first Instance coloured the Defendant as one excited by the foul desire of

gain, had forgotten himself so far as to trample under his feet the most sacred rights of his fellow creature, by depriving him of his freedom.

It is an unquestionable truth, Worshipful Gentlemen, that if the lurking holes of the human heart are traced, if his actions and proceedings are not lost out of sight, we are sure to find in all his transactions and dealings a sort of correspondence, which flowing from the same sources they are also discovered in his transactions.

The man who has been painted with such dark colours is said to have made himself guilty of such a heinous crime, and also evinced the highest degree of inhumanity and insensibility, and but recently this very same man in beholding the sufferings of those in need of assistance gave effectual support, on such an occasion he was honored, much to his credit, with a letter from the Colonial Secretary, in which he expresses himself thus: "I have it in command to convey to you the sense entertained by His Excellency of the humanity manifested by you. Measures will be taken for relieving you from the burthen which your charity has induced you to undertake." What a striking difference do we find in comparing these two sketches of the character of the Defendant?

We have now fulfilled the task in which we engaged, nothing more is left to us now but most strongly to recommend our client to the righteousness, pity and humanity of your Worships. Already afflicted by insupportable disasters, which he experienced in succession, he prays your Worships that your sentence may not be an addition to them; his unfortunate offspring also beg to lay their prayers before your tribunal, successive misfortunes have already plunged him in the most wretched state, a dreadful fire at the Island of Mauritius destroyed the whole of his property, and was about being reduced to the state of a beggar, the fangs of death already deprived him of two beloved wives, and shall he now, being advanced so near to an old age, be banished to a foreign country, there to spend the remaining few years of life in the greatest agonies and anxieties for his children, who are already so unfortunate, and have been deeply wounded; shall he there bear his existence under the greatest poverty and distresses? Must there his life decay, separated from his kindred and

friends, always under the dreadful impression on his mind that he is confined as a criminal? Worshipful Judges, behold his unfortunate children, paint to yourselves their hopeless situation, which becomes more afflicting by their recent loss of a tender mother who could provide in all their wants, their hearts are now besides filled with the cruel idea of becoming orphans by the loss of their father, their only hope and support. With tears trickling down their cheeks, and broken hearts, they pourtray to themselves the agonies by a separation from their father, and in their imagination accompanying him with their last adieux to the ship which shall carry him from hence. Worshipful judges! it is in your power to pour consolation in their wounded hearts, by making an end of their anxieties. O let him be acquitted by your righteous sentence, and happiness and peace will re-establish themselves in his family, a grey-haired father sha'l pour forth blessings on you, and a number of heartbroken children and friends, together with his fellow citizens and all those assembled here, shall rejoice that they are tried by Judges who mix humanity with justice, and equity and severeness going hand in hand.

(Signed) J. DE WET, Advocate.

The Court having seen and examined the Records held in the first Instance, having heard the pleadings of both parties in rehearing, and having attended to everything which deserved attention and could influence the Court in any manner, administering justice in the name and on behalf of His Britannic Majesty, doth declare the Ex Officio Prosecutor Rehearer to be aggrieved by the sentence bearing date the 20th June last, given in the first Instance, and doth condemn the Defendant to be confined at Robben Island for the term of twelve months, and doth reject the other and further part of the claim and conclusion, with condemnation of the Defendant in the Law expenses of the first Instance as well as those incurred in this rehearing, to be taxed and moderated by the Court. The Expences for the Ex Officio Prosecutor in rehearing are fixed by these presents at twenty five rix-dollars.

Thus done and resolved in the Court of Justice at the Cape

of Good Hope, on the day month and year above written, and promulgated on the same day.

(Signed) J. A. TRUTER,
W. HIDDINGH,
WALTER BENTINCK,
J. H. NEETHLING,
F. R. BRESLER,
J. C. FLECK,
P. S. BUISSINNE,
P. J. TRUTER, Junr.,
P. B. BORCHERDS.

In my presence,
(Signed) D. F. BERRANGE, Secretary.

On this day the 8th July 1823 Appeared in the Court of Justice office C. P. Zinn, who declared to appeal from this sentence to the Right Honorable the Court of Appeals for criminal cases in this Settlement.

Which I attest.

(Signed) E. BERGH, 3rd Head clerk.

[Enclosure 33 in the above.]

CAMP GROUND, 19th May 1827.

SIR,—I have the honor to acknowledge the receipt of your Letter of the 16th Instant, and in compliance with your wish therein expressed “to be referred to any disposition of the Roman Law or of the Batavian Statutes, which would be applicable to the offence of wilfully and maliciously registering a free person as a Slave,” I have the honour to state that the wilful suppression of a free person as a Slave is a crime known by the name of *Plagium* in the Roman Law, and in the Dutch Law by that of *Menschenroof*, which by Van der Linden, a Modern Author of repute, is described to be “the suppression of a man with intent to deprive him of his liberty.” The punishment of which crime varies according to the more or less aggravating circumstances of the cases from scourging and banishment to

death. This disposition of the Roman Dutch Law is perfectly applicable to the offence described in your letter, and has consequently, since the Proclamation of the 26th April 1816, been acted upon by his Majesty's Fiscal in a prosecution against Christian Philip Zinn, for having maliciously and wilfully caused to be registered as a Slave, and afterwards mortgaged a young girl, born from a Slave of his wife, which she had made free before her marriage, and which in consequence hereof had not been registered, pursuant to the said Proclamation, within six months after her birth; which prosecution was on the 2nd of July 1823 followed by a sentence of the full Court, whereby C. P. Zinn was condemned to a confinement at Robben Island for the space of twelve months. I have &c.

(Signed) J. A. TRUTER.

John Thomas Bigge, Esqre.,
His Majesty's Commissioner of Enquiry.

[Office Copy.]

Letter from R. W. HAY, ESQRE., to T. P. COURTENAY, ESQRE.

DOWNING STREET, 31 August 1827.

SIR,—Having laid before Viscount Goderich your letter of the 28th instant I have received his Lordship's directions to transmit to you an extract of so much of His Majesty's Royal Charter as relates to the establishment of a Supreme Court of Judicature at the Cape, in order to enable you to have a seal prepared for the use of the said Court. I am &c.

(Signed) R. W. HAY.





GROUND PLAN
of the
PRISON at Cape Town
Reference

- 1 Waiting Room
- 2 Sheriff's Office
- 3 Under Sheriff's Room
- 4 Prisons
- 5 Sheriff's Quarters
- 6 Yards
- 7 Kitchens
- 8 Constable's Room
- 9 Book-keeper's Room
- 10 Back Room
- 11 Turn Keys Room
- 12 Store
- 13 Constable's Rooms
- 14 Apartments for Civil Prisoners
- 15 Stables
- 16 Wash-house
- 17 Chapel
- 18 Apartments for Criminal Prisoners
- 19 Gun Room
- 20 Water Works

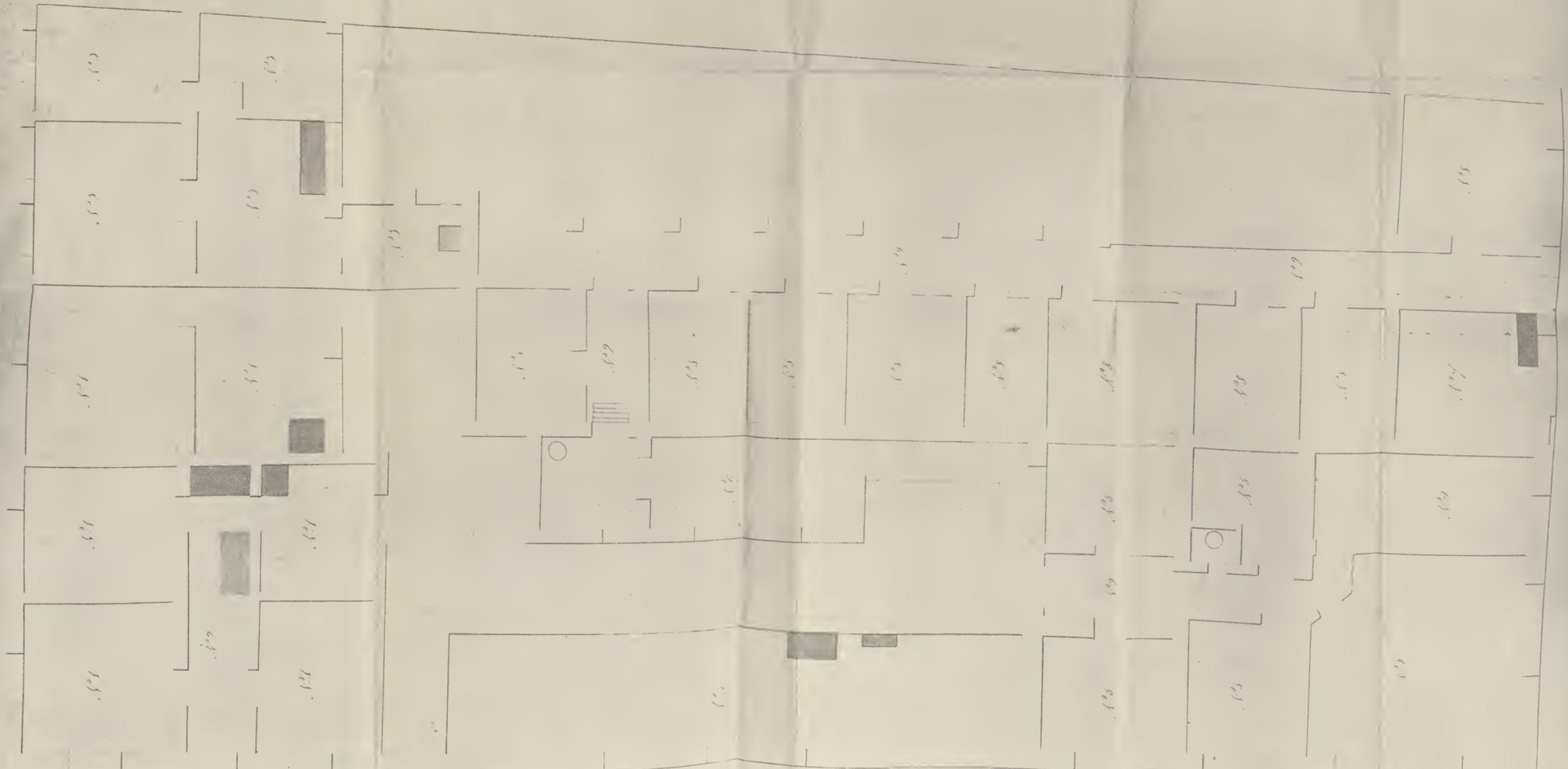
40820312211

End of English Part

UPPER FLOOR
of the
PRISON at 36, 50, 51

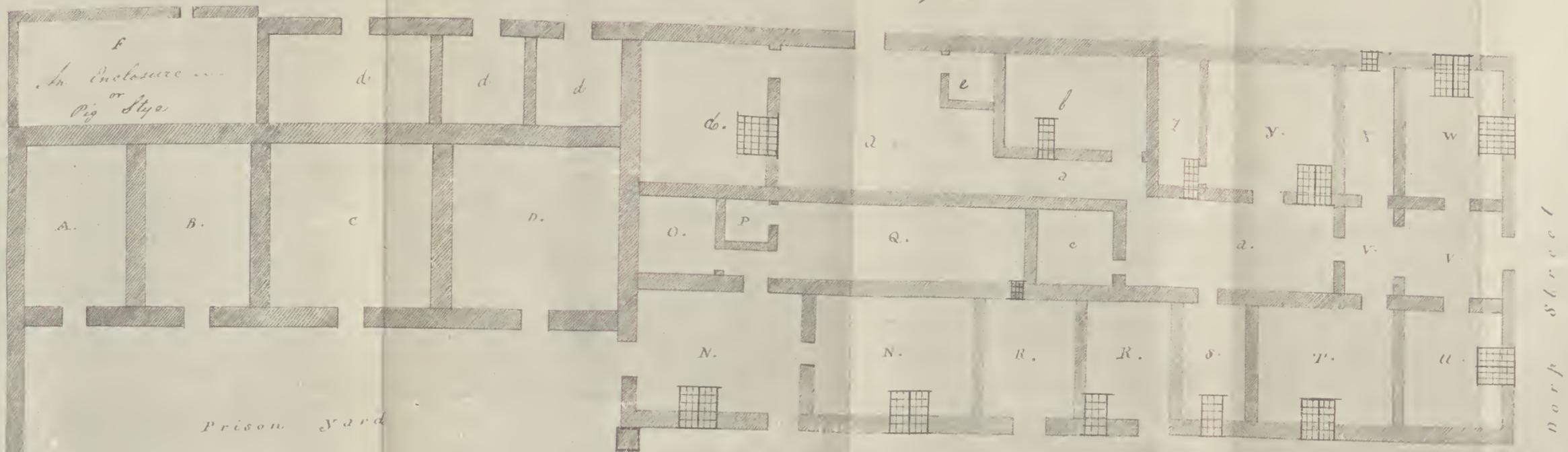
Reference

- 1. Room for the 2nd class of convicts
- 2. Room for the 1st class of convicts
- 3. Passage
- 4. Kitchen
- 5. Store room
- 6. Wash house
- 7. Bath
- 8. Hall
- 9. Passage
- 10. Passage
- 11. Passage
- 12. Passage
- 13. Passage
- 14. Passage
- 15. Passage
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- 99. Passage
- 100. Passage



A Ground Plan of the Prison, and Buildings attached
 at
 Stellenbosch

W. H. K. M.
 Architect



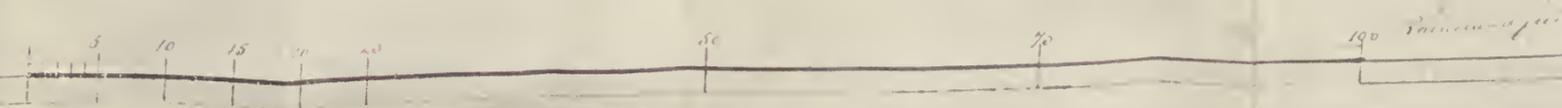
Reference

- | | |
|--------------------------------------|-----------------------------------|
| ABCD Four Cells for Criminals Arrest | S. S. Store for the under Sheriff |
| EFG Dwellings of the Captives | T. S. Room |
| H A Store for the Stables | U. S. Room |
| I A Store for the Fire Engines | VV. Two Halls |
| K A Stable for the Horses | W. S. Room |
| of the Police Horses | X. S. Pantry |
| L A Back Lane & Main Stairs | Y. S. Kitchen |
| M M Two Privies | Z. S. Servants Room |
| NN Two Rooms for Police Horses | aaa Yard & passages |
| O Kitchen for the Prison | b. S. Store |
| P A Pantry | c. S. Cow House |
| Q A Yard for the Prison | ddd Four Stalls |
| RR Two Rooms for Civil Arrest | e. S. Privy |
| | f. An Enclosure |

W. H. K. M.
 Architect

28th June 1826

All the Dimensions feet as equal to 12^{3/4} English Inches



Pl. 1.3

of the

District Prisons of SWELLER, N.D.M. & the Public Buildings

connected therewith

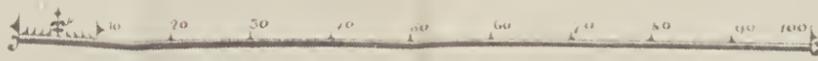
according to the Reference on the opposite Side

Surveyed & Planned by me

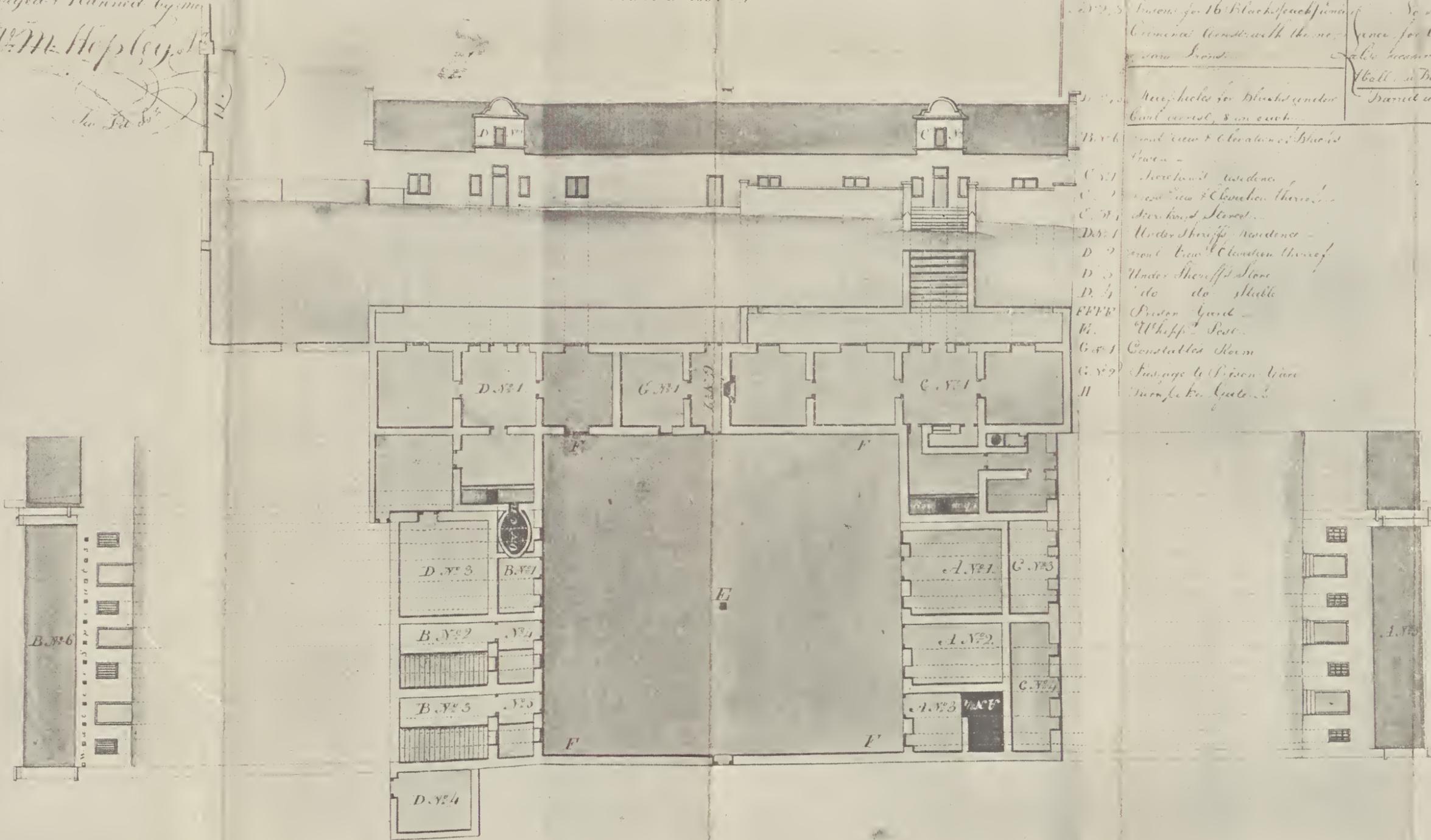
W. M. Hopley

To Sit

No. 1.
Swellendam



Scale of 100 Rhynl Feet.



Reference.

No.	Description	Remarks
B.N.1	Prison for White	Windows & Ventilators
B.N.2	Black Stone	No sufficient conductance for Air Ventilators are also recommended in the Back Wall. a Parrot Window betw. the Parrot windows, no Iron
B.N.3	Front View & Elevation of White	
B.N.4	Plan	
B.N.5	Prison for 16 Black & each 100 Criminals	Construction with the same Iron Bars
B.N.6	Front View & Elevation of Black	
C.N.1	Northward Residence	
C.N.2	Front View & Elevation thereof	
C.N.3	Backward Street	
D.N.1	Under Sheriff's Residence	
D.N.2	Front View of Christian thereof	
D.N.3	Under Sheriff's Store	
D.N.4	do do Stable	
F.F.F.F.	Prison Yard	
W.	Whiff Post	
G.N.1	Constable's Room	
G.N.2	Passage to Prison Gates	
H.	Door for the Gates	

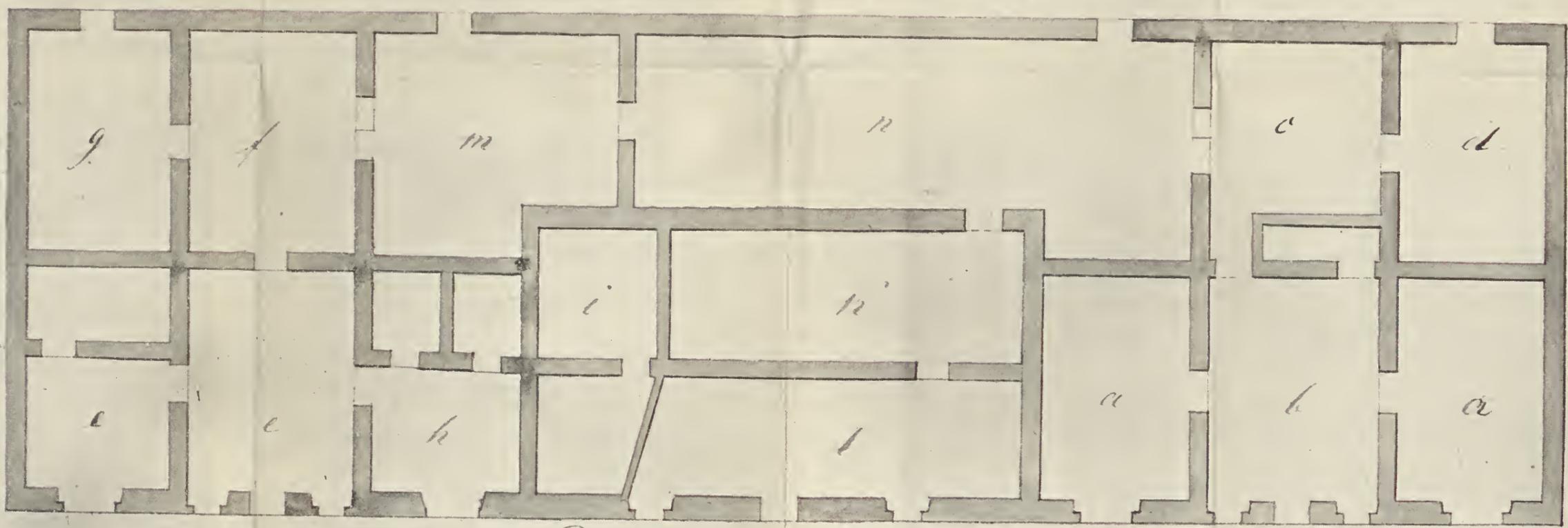
Plan of the Gaol at George

The 3 Rooms will hold about 26 Prisoners, the rest of the Building is occupied by the Undersheriff and Constables



Robertson
 describing the public house at Graaffhaind.

- a a The Under Sheriffs two Rooms
- b " " " Hall
- c " " " Kitchen
- d " " " Backyard
- e e The Police Constables
- f Kitchen
- g Backyard
- h Prison for Debtors
- i Prison for Women
- k " " " Men
- l Police Constables
- m Prison for the Women
- n " " " Men



Parsonage Street



Scale of 120 Rhynland Feet

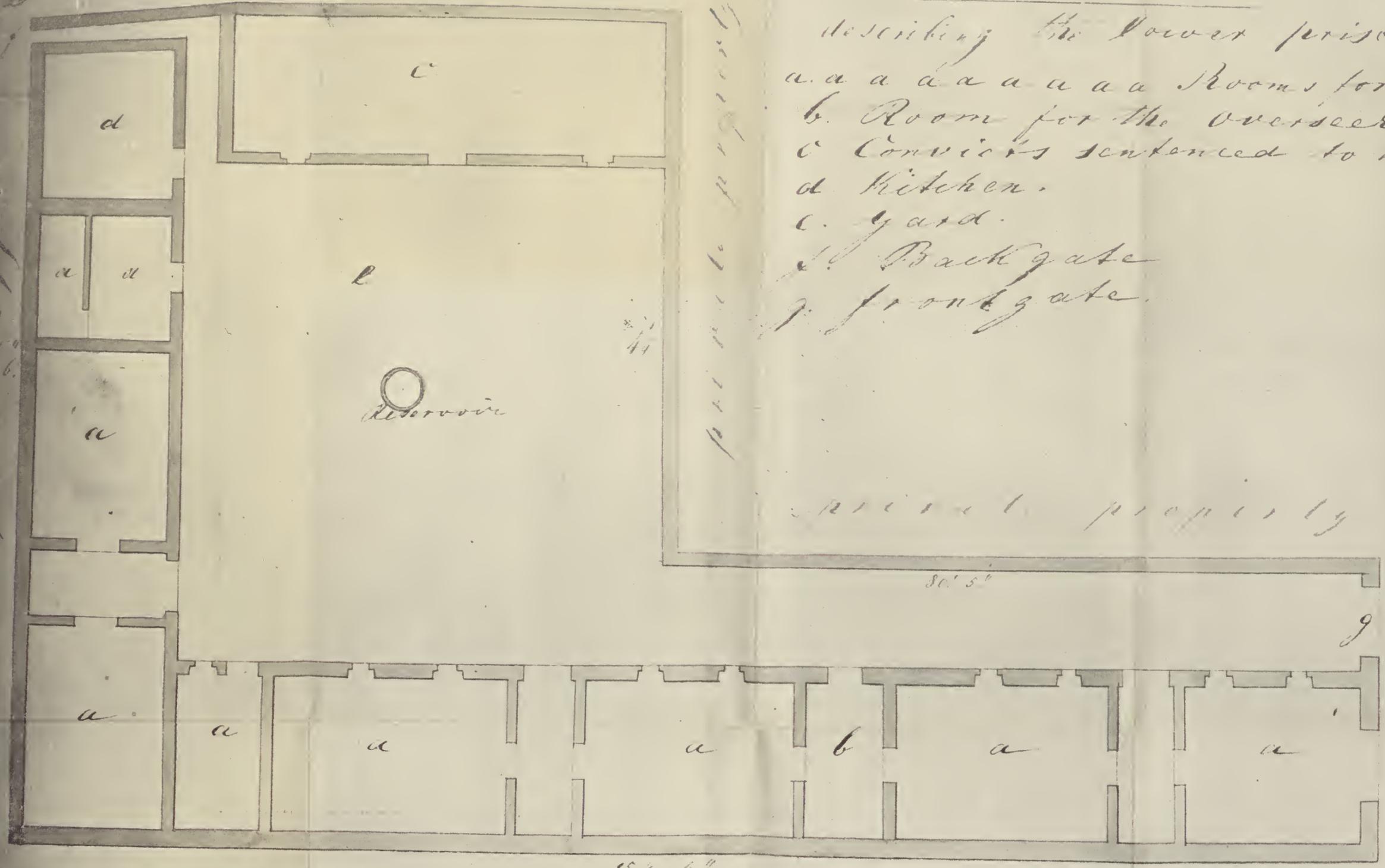
*possession of the
 main land*

private property

Particulars

describing the lower prison

- a. a. a. a. a. a. a. a. Rooms for prisoners.
- b. Room for the overseer
- c. Convicts sentenced to hard Labour
- d. Kitchen.
- e. yard.
- f. Back gate
- g. front gate.



private property

Church Street

private property



a Scale of 140 feet Rhynland measure

Designed by J. Steel
Drawn by Handley



[Office Copy.]

Letter from R. W. HAY, ESQRE., to the REVEREND WILLIAM CARLISLE.

DOWNING STREET, 31 August 1827.

SIR,—I am directed by Lord Goderich to acknowledge the receipt of your application of the 8th instant, and to acquaint you in reply that before his Lordship can decide whether he may have it in his power to appoint you to the Chaplaincy of Graham's Town, it will be necessary that you should satisfy the Ecclesiastical Board that you possess the requisite qualifications for undertaking the Ministry which you solicit.

I am &c.

(Signed) R. W. HAY.

[Original.]

Letter from SIR JOHN WYLDE to R. W. HAY, ESQRE.

DEAL, 31st August 1827.

DEAR SIR,—Having arrived here last night I find that the ship waits for my embarkation only before it proceeds to sea. It is my intention therefore immediately to go on board, and commence my passage to my post of duty.

Will you allow me to take this opportunity of mentioning, that during the *personal* interview I had the honor of holding with Lord Goderich, his Lordship was pleased to intimate with reference to my application as to having the occupation of a Government residence, that he saw no objection to my having the preference as to the occupation of Kimpts (Camp's) Bay Cottage, if the Governor continued at Newlands. As the Cottage, I find, is close to the sea, and at no great distance from Cape Town, may I take the liberty of suggesting that I should be glad to secure the Preference as to an occupation which seems likely to prove salutary to a family of children such as mine, for whom sea-bathing is so particularly desirable, and that I shall feel it matter of personal obligation, if, through

your good offices, I could ascertain that his Lordship continued to see no ground of objection to my having the refusal as to occupation of that Cottage.

I beg once more to tender my respects &c.

(Signed) JNO. WYLDE.

[Office Copy.]

Letter from R. W. HAY, ESQRE., to MAJOR-GENERAL BOURKE.

DOWNING STREET, LONDON, 1st September 1827.

MY DEAR SIR,—In consequence of a suggestion from the Cape Judges measures were taken here for obtaining from the Netherlands a collection of the Dutch East India Statutes, and of the Laws which were in force in Batavia prior to the year 1806, and I now beg leave to enclose to you copies of some communications which have been received from the Foreign Office, from which it appears that the King's Ambassador at Brussels has been officially informed that there exists no collection of the Statutes and Laws in question, and I request that you will be good enough to communicate this information to Sir John Wylde and to the other Judges. I remain &c.

(Signed) R. W. HAY.

[Office Copy.]

Letter from R. W. HAY, ESQRE., to SIR JOHN WYLDE.

DOWNING STREET, 1 September 1827.

DEAR SIR,—I have to acknowledge the receipt of your letter of the 31st ultimo, and I beg leave to acquaint you in reply that having had an opportunity of mentioning to Lord Goderich the wish which you have expressed to be allowed to occupy Camp's Bay House, in the event of the Governor residing elsewhere, his Lordship expressed himself readily disposed to meet your wishes as much as possible by allowing you to become the tenant of that establishment upon the same terms on which it would be let to the Public. I remain &c.

(Signed) R. W. HAY.

[Printed Copy.]

Observations on the Letter addressed by SIR RUFANE DONKIN to EARL BATHURST on the 6th of April 1287. By LIEUTENANT-COLONEL BIRD.

Advertisement.

Since the following observations were written and communicated to several of Lieut.-Col. Bird's personal friends, some Papers, laid upon the Table of the House of Commons, have been received in this Colony, which bear upon some of the points to which those observations refer.

Lieut.-Colonel Bird prefers letting his remarks go forth now in the shape in which they were previous to the receipt of the documents to which he alludes, to making any alteration whatever in them. It is better that his view of them, antecedent to his cursory perusal of the documents, should go forth. But they call for some further observation.

Lord Charles Somerset, it appears, is greatly surprised at Lieut.-Col. Bird's answer to the Commissioners' query No. 26. Lieut.-Col. Bird's remark upon the pernicious and illegal practice of making advances from the Treasury, without Warrants, is retorted upon himself, and he is stated to have commenced that practice. The observations in the following pages will pretty clearly explain the difference; but it is requisite here to add, that the nature of the issues quoted are totally different, the occasions of issuing them entirely distinct. It is well known to the Colonists, that shortly after the arrival of the Settlers, the Acting Governor proceeded to the Frontier, and remained there a considerable time; that he returned thither in the succeeding year; and that his absences were for very lengthy periods. During those absences the issues quoted by Lord Charles Somerset took place, they were chiefly made for carrying on the repair of the Wharf, by W. O. Jones. Lieut.-Col. Bird admits that it was irregular and improper to have done so, but it saved time, and prevented the stoppage of necessary works. The finance branch of the Colonial Office was acquainted with the transactions, and the issues were made to the head of a department, not to Jones

himself, which he, and the Inspector of Buildings, Mr. Melville, had the *daily means* of checking ; besides which, the Issues were or might have been covered at a moment by Warrants from the Acting Governor, on the Receiver General's application. Lieut.-Col. Bird regrets deeply that the transaction took place, because it formed, as Lord Charles Somerset admits, a precedent for his subsequent transactions, when the advances were made by his irregular orders to Jones, who had no check over him, as is shown in the subsequent observations, who did not render accounts, and who has died without accounting for the sums he received ; besides which, as it is elsewhere observed, there was no communication of the Issues, either as to the periods, or purposes, made to the finance department of the office of the Secretary to Government. Lieut.-Col. Bird had a pointed query put to him by the Commissioners of Inquiry—was he or was he not to answer it correctly ? He replied with all the accuracy which absence of documents and length of time since the transactions, admitted, and he did not attempt to screen himself or Sir Rufane ; he told the Commissioners when the practice began, viz. with the appointment of Oliver Jones—they had the means of verifying this, why they did not do so is for them to explain : why they notice every item issued in the former administration, and stop short in 1822, they know best ; but as the difference in the circumstances of the two issues is material, it ought to have attracted some notice from them ; for it is clear that inculpating Lieut.-Col. Bird will not cover the great irregularity which he brought to their notice. It is not unworthy of remark, that after all the obloquy Lord C. Somerset has thought fit to cast on the period of Sir Rufane's government, this great irregularity is the part he has chosen to copy. Lieut.-Col. Bird is quite satisfied that his reply to the 26th query was accurate—it was not courteous to Lord C. Somerset, true ; Lord Charles could not expect much courtesy at his hands.

Few persons will put much faith in the subsequent assertions of the Commander of the Forces, who has deliberately acquainted the Commissioners of Inquiry* that he never heard of the intended seizure of Gaika (*executed by his own orders*) “ until he read it in this tissue of falsehood ” (the

* (See Parliamentary “ Papers,” No. 371. p. 40.—Sess. 1827.)

Settlers' complaints), but which he subsequently expresses his regret to the Commissioners that Lieut.-Col. Scott had not planned so as to insure the success of the object in making it.*

One remark is perhaps necessary on the alteration of the Warrants for the payment of the Civil Servants. It is admitted that such a transaction took place, and that the Civil Servants benefited about nine skillings (20*d.*) in each pound sterling. Does anyone imagine that a reference would have been made if the average were less instead of more? But with respect to the reference, and to Mr. P. Brink's Letter, some inaccuracies will confirm Lieut.-Col. Bird's view of this subject. Mr. P. Brink asserts that the "*drawing*" on the 31st of March altered the average of the Exchange: now this is not correct. The *tenders* only were called for on the 31st of March, and the

* When so flat a contradiction is given to a notorious fact, as the one quoted above from Lord C. Somerset's communication to the Commissioners of Inquiry, dated 18th Sept. 1824, it is not possible to be too diffuse in pointing out the fallacy. The following Notes from Lord C. Somerset to Lieut. Col. Bird, on the subject of the seizure of Gaika, written antecedent to the attempt, and subsequent to its failing, will most clearly establish the *incorrectness of his Lordship's memory*, and will make every prudent Reader pause, when he may see even the strongest asseverations, before he gives credit to them.

Extracts of Notes from Lord C. Somerset to Lieut. Col. Bird.

Wednesday, p. m. the 13th March, 1822.

"Rogers' Letters from the Frontier have not yet been sent out, but I enclose you a private one from Scott, which makes the next post interesting, for I hope we *have* Gaika in our trammels."

Thursday, $\frac{1}{2}$ past 9, 21st March, 1822.

"The Letters from the Frontier are this moment arrived; I have just skimmed over a Letter from Scott.—'*Gaika ran away and succeeded in escaping,*' but I think the business was as well conducted as possible (as far as I have yet read) and that the effect will be very advantageous."

Yours, C. H. S.

Wednesday, April 3, 1822.

"It is not characteristic of the Caffers to attempt hostilities when they have been greatly frightened, which no doubt they were by *Stuart's* last visit; however, Scott has done the wisest thing he could do, only I wish he could keep matters more secret; from what I heard I have no doubt that the Brigade Major was the propagator of the *intended operations against Gaika* by the Cavalry."

drawing could only have taken place at a subsequent period, as it actually did on the second day of the ensuing month, and it was then only that the rate of exchange could be regularly fixed; the tenderers might in the intermediate time have failed, and have necessitated a call for fresh tenders. It was the drawing, therefore, which ought to have guided the rate of average, not the tender. Mr. Brink is therefore inaccurate in his letter, and his document, in so far, is nothing worth. But admitting its entire correctness, it does not the less prove what Lieut.-Col. Bird quoted the circumstance to establish, viz.—the influence which the mode of payment had upon the rise and fall of the exchange.

OBSERVATIONS.

Some of the latest arrivals from England have brought out two very unexpected publications, which have excited great interest in the Colony of the Cape; one of these is the Letter addressed by Sir Rufane Donkin to Earl Bathurst; the other is, the Report of a Debate which is said to have taken place on the 18th of May last, in which Mr. Wilmot Horton is stated to have asserted, in reference to Sir Rufane Donkin's publication, that Lord Charles Somerset had explained away all the charges brought against him, to the satisfaction of the Secretary of State for the Colonies. It was with no small surprise that Lieut.-Col. Bird saw many documents from his official Papers, and much of his private correspondence, unauthorizedly given by Sir Rufane Donkin to the Public. He cannot now complain of this, but adverts to the circumstance merely to say, that he would not have permitted any part of his own case or papers to have gone forth in such a shape. It now, however, rests with him solely to solve the following question arising out of Mr. Wilmot Horton's supposed assertion—that Lord Charles Somerset has satisfied the Secretary of State on all the points which have been imputed to him. How is this as regards what rests on Lieut.-Col. Bird's communications, as given in Sir R. Donkin's Pamphlet? Lieut.-Col. Bird will premise the detailed reply to this, with one observation only, which is, that it is not his intention

to trouble those into whose hands this reply may fall with any part of his own case, but to confine himself to those remarks which have been quoted from his letters or papers, which relate to Lord Charles Somerset.

The affair of the missing letter will be passed over with little comment, it not having attracted any considerable attention ; but the discrepancy, if any, between Lieut.-Col. Bird's communication and that of General Bourke is, that it appears from the one that Lord Charles told the former that he did not recollect such a despatch, and the latter that he had sent home the original, and afterwards, when the original was found at the Government House among his Lordship's papers, that it was the duplicate which had been sent home ! but it is not here explained how it happened that Lord Charles took upon himself to open a letter addressed to Sir Rufane Donkin from the Secretary of State—it was not addressed to him (Sir Rufane) as Acting Governor of the Cape ; it had been written subsequent to Lord Charles' leaving England ; the date at which the mail left England must have clearly shewn this,—and there does not appear to be the shadow of an excuse for so flagrant a breach of trust. The box or bag of despatches was addressed to the Governor Lord Charles Somerset—one enclosure in it was this despatch to Sir Rufane, it could not therefore have been a paper addressed to the Acting Governor of the Cape, and there could be no plea for having perpetrated this extraordinary act. There is an unqualified admission of this fact, which however is treated as if it were not worth attention. At the period at which the despatch was called for, Lord Charles had opened the original and duplicate, and had caused a copy to be taken of them, and yet he denied having any knowledge of such a letter.

The next case in which Colonel Bird's name occurs is in that of the grant of the grazing ground of Graham's Town, which is said to have been ceded to Captain Somerset in consequence of the real circumstances of that case not having been laid before the Acting Governor : upon what does this accusation rest ? It is said, in undisguised terms, that Captain (now Colonel) Somerset deceived the Acting Governor as to the situation of that land ; did he, or did he not do so ? Lieut.-Col. Bird *possesses Captain Somerset's letter* in which he states

the land asked for to be distant two miles from Graham's Town ; the following extract from that letter is clear :—

I am going to take the liberty of asking you to stand my friend, in a request I have made to Sir Rufane, to grant me a small tract of land in freehold, of 200 acres, in a valley about two miles from this town, consisting of one small spring, on which I would build a house, and intend ploughing up the whole of it. I have had it measured, and have forwarded the diagram officially thro' Cuyler. I purchased an erf here last year, on which I have expended upwards of £400, and I hope that will be considered as a proof of what I would do if I could be so fortunate as to obtain the land I am now asking for ; there is only one small spring, and it will require much expence and labor to open that. If you will be kind enough to serve me in this business, if I am not taking too great a liberty in asking this favor of you, I shall ever feel grateful, and increase the obligations which I know I am already under to you.

Thus, the land prayed for is shewn to be *one half mile* beyond the limits of the grazing ground ; to a grant so situated there would have been no objection, but the fact is, that the land is not more than *half a mile at most* from Graham's Town, and therefore entirely within the limits of the grazing ground attached to the Town : it is strictly the Town land. This misrepresentation procured Col. Somerset the land—and yet in the list which Lord Charles Somerset transmitted to the Colonial Office, complaining of Sir Rufane's grants, this particular, and as shewn *objectionable*, grant is unnoticed, is struck out, and moreover the first act of Lord Charles upon his return is to increase this grant by a cession of as much more land as Sir Rufane's grant contained.

In page 68, it is said, that Lieut. Col. Bird called the attention of the Commissioners to the fact of Lord Charles Somerset having paid himself 45,000 Rixdollars more than he was entitled to. He did so ; the finance books, and the evidence of Mr. Stoll, will prove that fact. Col. Bird is ready to swear, that he told Lord Charles Somerset that he was not entitled to the salary, and that Lord Charles Somerset said he would communicate with Lord Bathurst on the subject—it may be proved from Lord Charles' correspondence at *what period* he did so correspond with Lord Bathurst—what the Secretary of State's opinions on his claims were, and how far he did or did not concede to them : this is a plain matter of fact, which official books will prove. The order for *all* Civil Servants to

receive salary from the date of their landing in the Colony exists, and will be forthcoming if called for. Is a Colony to pay two Governors for the same period, under any circumstances ?

At page 80, an extract is given of Col. Bird's replies to the Commissioners of Inquiry, in which his account of the circumstances which brought about the augmentation of the Cape Corps in 1823, is given.

In the beginning of December 1822, Lieut.-Col. Bird was sent for to Newlands, and introduced into a room (not the usual room of business) where Lord Charles was with one of his Aides-de-Camp; this mode of receiving the Colonial Secretary struck him forcibly; it was most unusual; something was then said about the preparations making by the Caffer Chiefs to attack the Colony, to which Lieut.-Col. Bird replied, that nothing official had reached him on the subject; a draft of a despatch was then handed to him, (it was not in Lord Charles' writing,) in which the augmentation was recommended. Col. Bird only made an observation as to the wording of one part which appeared incorrectly expressed, but before breaking up, he asked, whether it would not be more satisfactory to add a detailed estimate of the additional expence which would be incurred by the measure? to this Lord Charles objected. Col. Bird said it would be difficult to support the expenditure—he then took the draft to town, where it was copied by Mr. Brink, and the following day, or day after that, he returned with the despatch to Newlands for the Governor to sign. On the day he so returned, the frontier Post had arrived, and a letter from Col. Scott, with an enclosure from Mr. Thomson, were on the table. Lord Charles handed them to Lieut.-Col. Bird, who observed, that they did not bear out the statement of the despatch. Lord Charles answered, that he had other information. Now this letter of Col. Scott with Mr. Thomson's enclosure, to the effect of disproving the tenor of the despatch, are forthcoming, and will prove the view taken by Col. Bird of this transaction. Col. Scott's letter is an answer to a reference made to him as to the existence of the rumoured combination. From whence then did Lord Charles obtain his information, and why did he conceal that information from the Colonial Secretary? If he obtained it

from the Landdrost, then how came the Landdrost not to make the Frontier Commandant acquainted with the circumstance? and how came he not to report it to the Colonial Secretary? But the Commandant on the spot makes all the enquiry he can, and then writes word that the rumor is groundless. Or did the officer commanding the Cape Corps get the information and transmit it? How then came *he* not to make the communication to his commanding officer, and to the civil magistrate? this is inexplicable—but that Col. Scott and Mr. Thomson knew nothing of it from either of these sources, and were right as to the rumour being groundless, is proved, by no combination having taken place, and by Col. Scott's having proposed to send part of his troops away for the service of Cape Town. How did it happen that from the moment the dispatch was sent off, nothing more was heard of this combination? Why were Col. Scott's letter, and Mr. Thomson's opinion, not communicated to the Secretary of State? Will it be denied that they came in time?—hardly—but if it be, ought they not in fairness to have been sent subsequently? or ought the augmentation to have gone on when the rumour which caused it to be proposed was discovered to be totally unfounded? the letters so often alluded to, which Sir Rufane Donkin says he has in his possession, bear out the inferences. Lieut.-Col. Bird's statement contains the assertion that with these documents on the table, the dispatch was sent off, the existence and dates of the letters will prove the correctness of what Lieut.-Col. Bird has so asserted. He has called the dispatch deceptive and fallacious,—it was so in many respects, in none more so than in the mode proposed for defraying the expence of the augmentation, which common calculation will show; it was known that it would entail an additional annual expence on the colony of from £3000 to £4000, and this fact was suppressed. Now is this or is this not deceptive and fallacious? But Col. Bird has further said that Col. Scott subsequently recommended the augmentation, "having been required to do so." Can this be established? and if it can, does it or does it not stamp the character of the transaction? On the proof of this much depends, but there are two officers now in London well known to Sir Rufane, who saw Col. Scott copy the letter he was "required" to write,

and those officers are ready to depose to that fact. May it not, however, be said, that Lord Charles has *now* detailed the circumstances of the secret information he had received, relative to this combination of Caffers, and that the result of the disclosure has been satisfactory to Lord Bathurst? Can it then be supposed that his Lordship's information was so positive as to the combination, when he found it necessary to write to Col. Scott to enquire whether such a combination did or did not exist? Why make this enquiry if the fact was established? or how did it happen that 600 miles off the combination should be known, which Col. Scott on the spot could not hear of? Can it be supposed that when Col. Scott was making his enquiries into the circumstances, and sending an express into Cafferland, that he did not at the same time consult the Landdrost on the subject, and the officer commanding the regiment which was most likely to be in some communication with the Kaffers? the plain deduction from all this is the correctness of Col. Scott's letter, that there was no combination, and that the information which Lord Charles had received, was incorrect, if not a mere fabrication; assuredly it was such as did not warrant the dispatch sent by the *Heron*, unless that dispatch had been accompanied by the details of the information, and by Mr. Thomson's and Col. Scott's declaration that no combination existed—withholding these important letters was deceiving Lord Bathurst. But it may be asked how happened it that Lieut.-Col. Bird at the time did not object to the despatch being forwarded, and did not protest against the measures therein recommended? He has explained to the Commissioners that he had no right to protest, and the cause of his silence on this occasion is of easy explanation. It is well known that there was little intercourse at this period between the Governor and the Secretary to Government; the manner in which he was received at Newlands on the occasion now before the public, an Aide de Camp seated at the Governor's elbow to note and minute, comment and construe any word which should fall from him, was alone a sufficient cause for his having thought it prudent to be silent under such peculiar circumstances; but, independent of this, a communication had been made to Lieut. Col. Bird, that he was not to give the Governor his opinion on his

measures, which communication had been conveyed to him subsequent to his having remonstrated on the change of the name of the Tulbagh District to that of Worcester, on the grounds that that change might create confusion in Titles at a future period, and would be offensive to the Colonists at the moment. But Col. Bird had a third reason for abstaining from remark at the moment, and that reason was, that he was most fully impressed that the measure of augmentation could not be carried, for that when the Secretary of State should come to compare this recommendation with the arguments used by Lord Charles at an antecedent and not distant period, he would find such cogent reasons for not increasing the establishment of the Cape Corps (reasons suggested by Lt. Col. Bird, with whom the saving to be effected by reducing the Cape Regiment was always a favourite measure) that it would be imperative on him to refuse his sanction to the measure proposed. But if it be insisted that Lt. Col. Bird failed in his duty to the Public, and that fear of involving his numerous family in ruin prevented his taking those steps which that duty called upon him to adopt—he will reply, that admitting the justice of the censure does not alter the case as it regards Lord Charles Somerset in the smallest degree, and that it is his conduct which at this moment is before the Public. Lt. Col. Bird will however add, that he did take steps to make the Secretary of State acquainted with this transaction, but the prudence of the friend (not Sir Rufane Donkin) whom he consulted on this occasion over-ruled his intention. What part then of this disclosure is not fully substantiated? Does not Col. Scott's letter and Mr. Thomson's enclosure fully bear out the remarks made? Does not the dispatch itself prove the fallacy pointed out? Has the expence not fallen on the Colony to an extent it could not afford? What of all this can be disproved? Is the following extract of a letter from Col. Scott not clear as to the latter part of the reply to the Commissioners, and does it not prove beyond controversy that there was no Caffer combination?

16th June, 1823.—Under the *present friendly feeling* of the Caffers towards the Colony, which it has been, and will continue to be my policy to keep up while I remain in this command, I am of opinion when the additional squadron is completed, that six companies of the 6th regiment may with

safety be spared from the Frontier, and the two flank companies *may be now removed without any risk.*

It will be clear from all this that in the communication made to the Commissioners by Lieut. Col. Bird, there was neither high colouring nor exaggeration, but that the plain fact was adduced, and adduced in point, to the argument which was then to be supported. Had it been wished to add insinuation to fact, it might have been remarked, that at the very period of the despatch being sent away, that is in December 1822, it was rumoured in London that this very augmentation was to take place; when Lieut. Col. Bird purchased a Lieutenancy in the Cape Corps for his son, the gentleman who then left the Corps communicated the circumstance to Lieut. Col. Bird's agents, who wrote to him to that effect. How came the rumour to be thus spread, unless a previous determination to carry this measure into effect had been spoken of, and if so, is it an unlikely inference that the Caffer combination was a *ruse* invented for the purpose of attaining a desirable end?

At page 83, Lieut. Col. Bird is stated to have made some strong observation on the expenditure at Newlands. Lieut. Col. Bird might perhaps with propriety have been called upon by the Commissioners to substantiate any remarks of that nature; but he was not required to do so. Had the Commissioners thought proper to follow up the heads of information, which they called for and obtained from Col. Bird, the explanations here given would probably have been satisfactorily avoided. It is true that Lieut.-Col. Bird's observations on the Newlands expenditure are "strong," he always felt its impropriety, and always spoke as he felt on the subject: he knows that his interference and opinions were very offensive, and that finally it was thought more convenient not to communicate with him on the subject of these interminable buildings. When, therefore, after the falling of Newlands in 1819, he strongly remonstrated against its being rebuilt, he perceived that he gave marked offence, and other channels were had recourse to for carrying through the future measure, the agreements, or plans, for which did not come (as they should have done) under the cognisance of the Secretary to Government, and Sir Rufane on taking the Government was warned against the influence the Secretary might use to delay

the rebuilding of this expensive structure. Is one word of his communication to the Commissioners too strong on this point, or not fully borne out? If there be one such word, how has it happened that peremptory orders have reached the Colony from the Secretary of State, for getting rid of this encumbrance? of this wreck of one million of rixdollars? Is it then reasonable to suppose that Mr. W. Horton was correct when he said, as attributed to him, that Earl Bathurst was perfectly satisfied with Lord Charles Somerset's explanations on this head? or can it be believed that the reporters have not been incorrect in their assertion that Mr. W. Horton did say so? But Mr. W. Horton at the period he is supposed to have made this strong declaration was not in possession of Mr. Commissioner Bigge's *final* report upon the total expenditure at Newlands, his inquiries into that subject having been among the last matters of his investigation—and it is believed that his report did not leave the Cape many days before he himself took his departure from thence, that is, in the month of May last, subsequent to the date at which Mr. Horton is reported to have made the assertion. To say more in confirmation of the observation which Lieut.-Col. Bird made to the Commissioners respecting Newlands appears quite superfluous: the purport will therefore be briefly repeated—Newlands was bought by Sir D. Baird, in 1806, the house was then put into repair, it was again altered and added to in Lord Howden's administration; it had a second story built upon the old and bad foundations under Lord Charles Somerset, the whole in consequence crumbled in 1819—it was rebuilt upon a new plan in 1820, 1821, and 1822; from which period workmen never left it till the departure of Lord Charles Somerset in 1826—it is now in ruins, and at this moment is dismantling, and the doors and windows are taking out, which are all that can be saved of this enormous waste. If the expences can be unravelled, which, mixed as they are, partly civil, partly military, will be a work of great difficulty, it will be seen that they have been to an alarming unauthorised amount. What then is there in Lieut.-Col. Bird's assertions on this head which (in the absence of Mr. Commissioner Bigge's report of May last) can be said to have been disproved? is it not moreover on record, that, by objecting to the expenditure, he gave great offence to Lord Charles Somerset?

that in consequence, the agreements were entered into, most improperly, without his knowledge, and without passing through the regular channel of his office? that his efforts to effect the vast saving which not rebuilding Newlands would have done to the public have been most heavily visited on himself? Lieut.-Col. Bird will be slow of belief that Mr. W. Horton has said that all this is satisfactory to Earl Bathurst.

At page 86, a query, put by the Commissioners of Inquiry relative to advances of public money on account, is inserted, with his reply to the same. Does this reply accord with the facts? The Receiver-General's books, and the reports of the Fiscal and Auditor, who certify quarterly the state of the Treasury, will prove the entire accuracy of the reply. Now this subtraction from the Treasury of a large sum of money is not only contrary to the Treasury Instructions, but was irregular in placing the large sum at the disposal of the man, whose peculiar duty it was—not to expend the money, but to take care that the charges of other workmen were moderate and proper, the quantity of stores purchased correct, and the prices and quality good, and the work effectually executed. From the moment this principle was lost sight of, a door was most irregularly opened to fraud, and it will be seen that the door was not opened in vain. But it is understood to be said that this reply is inaccurate, in as much as the issue of advances had been similarly made to the Wharfinger at one time,* and on another occasion to the Port Captain. With respect to the first of these remarks, it is answered, that the Wharfinger did receive such advances very irregularly, which advances were expended by the same William Oliver Jones, and it was with great difficulty and with much trouble that any proper account of the expenditure was procured; but, however, the repair of the Wharf was a work of great difficulty, and in the dearth of engineers at the Cape, there was no other person than Jones found capable of effecting it; therefore, on that occasion, to have employed

* Lieut.-Col. Bird is not aware at what dates the Receiver-General made the issues for the repairs of the Wharf, but he is quite positive that nothing but the absence of the Acting Governor could have necessitated or induced his assent to the measure; nor does he call to mind having been spoken to more than once on the subject of the arrangements for those repairs, when he assented to the mode suggested.

William Jones was in some respects unavoidable ; besides which W. Oliver Jones had not at that time been appointed Inspector of Works, he was employed as any other tradesman would have been. With respect to the second instance, that of the advance of £75 to the Port Captain, for building a lifeboat, the circumstances are widely different ; the boat was much wanted ; the acting Governor was on the Frontier, and the work could not proceed without an advance ; it was not taken out of the Treasury by a *verbal* communication, but an office communication was made to the Receiver General, who thereupon made the issue. The forms were not gone through which the instructions prescribe, but the transaction was otherwise *strictly official* : it was an irregularity, and Lieut.-Col. Bird regrets that such an irregularity can be imputed to him ; he however gave the order and must abide the consequences, if he be censurable for having done so under the peculiar circumstances in which he was placed,—but the 95,000 Rixdollars were very differently issued ; their issue was for *some time not known*, they were advanced on *verbal* orders, of which there was no record in the office where the finance books are kept ; they were irregularly advanced to a person who ought not to have been employed to carry on the work, but to superintend the work of others ; and, lastly, they were advanced to a man of notoriously bad character, the consequence of which has been, that he has not satisfactorily accounted for the monies he received ; that he has stated to have received verbal orders for executing works, which orders are denied to have been given to him, so that upon his accounts there is a deficiency of nearly 10,000 Rixdollars, which he has died indebted to the public. He appears to have been impressed with the opinion that he had only executed works which he had been verbally instructed to carry on, this is said to be denied, and thus is there a personal altercation between the King's Representative and W. Oliver Jones, arising out of this irregularity, to the disclosure of which the Commissioners' query led, and there is *between them* a default on this account amounting more or less to the aforesaid sum. Lieut.-Col. Bird does not believe that there is any inaccuracy whatever in his reply to the Commissioners on this head, since that reply begins by stating that “ he does not recollect when the practice (of making advances) commenced, but that he believes it did so with the

employment of W. Oliver Jones." If he is now rightly informed, it did begin with advances made for the repairs of the Wharf, which brings it to the time of the first employment of W. Oliver Jones. Besides, Lieut.-Col. Bird, speaking wholly from memory, on points which he was compelled to answer, had cautioned the Commissioners not to hold him responsible for the inaccuracies of his memory.

But the reply to the Commissioners' investigation goes on to state that Lord Charles ordered the account of the Government Cottage not to be made out separately, but to be blended with the general expenditure of the Government House repairs. This may be denied, the directions were verbal, and given in a close office room, but when Lieut.-Col. Bird made the communication to the Commissioners, and stated, that no entry of the large item appeared in the accounts when he left office, he was on the spot, as were the Commissioners, not many hundred yards from where the finance books were kept, to which reference might have been made at the instant, from an inspection of which the assertion would have been immediately verified. Lieut.-Col. Bird cannot be held responsible for the vouchers which may subsequently have been introduced, he was *at the time* prepared to shew and prove that William Oliver Jones had been called upon to furnish the accounts; that he had not done so; that subsequently to the order alluded to having been given, Jones was not again troubled for them, in a separate state; that the expenditure was not entered in the finance books—that there was no irregularity however in his office, for that the orders had been issued *verbally* by the Governor to W. O. Jones, to whom he had caused 95,000 Rixdollars to be advanced from the Colonial Treasury, likewise by his *verbal orders*, and that this notwithstanding, the Governor did not hesitate to take the annual oath to his accounts which the Treasury instruction requires! All this could have been proved in the course of one-half hour, and most of it, whatever may have since occurred, which he has no means of knowing, and only hints at as among the number of possibilities, may still be confirmed by unquestionable documents and witnesses, which must place this allegation beyond the possibility of refutation.

In the Appendix, page 99, Sir Rufane Donkin has introduced

a letter, written by Lieut. Col. Bird to Captain Somerset, on the subject of a personal affront which the latter had offered to the acting Governor, and which had been accommodated by Lieut. Col. Bird's active and unremitting interference. It is with satisfaction he has seen this circumstance brought forward,—it is probably the only part of the pamphlet which has excited in him that sensation unalloyed, since this disclosure proves in the strongest manner the pains which Lieut.-Col. Bird took to prevent the disgraceful scenes which ensued upon the arrival of Lord C. Somerset from England. That letter shews how anxious he was, that, if harmony could not be restored, which, from his knowledge of the bitterness which Lord C. Somerset felt towards the Acting-Governor, he could scarcely hope, appearances should at least have been observed. Lieut.-Col. Bird knew what Lord C. Somerset's feelings were towards Sir Rufane Donkin, and he knew from a letter written by His Lordship previous to his leaving England, that it was his intention upon his arrival to put the insult upon Sir Rufane Donkin which he did put. It was to avert this disgrace from Lord Charles, that he availed himself of the opportunity which the additional and important service he considered himself to have rendered to Lord Charles' son, afforded him, to try to save the father from committing the dignity of his high office in the disgraceful way in which he did commit it—of his intention to do so he had apprized Lieut.-Col. Bird *by letter just before he left England*. On the subject of this fracas, Captain Somerset observes, under date 30th Sept., “What my father will say to all this, I know not, but I think he will go mad!” and, he adds, “the day for my story, I suppose, will come.” Now, coupling this threat with what Lieut.-Col. Bird knew to be Lord C. Somerset's premeditated plan, he felt the most poignant distress, and therefore he wrote urgently to Captain Somerset in the hope that calm consideration, and some respect which might be supposed to be due to the advice given him, might induce him to forego the intention expressed of irritating his father. He at first flattered himself that his endeavours would be successful, for Captain Somerset in his reply to the letter which Sir Rufane Donkin has copied, after expressing the great obligations he said he felt to Lieut.-Col. Bird for having so warmly espoused his cause, concludes by

saying, “ the best way I can prove the extent of my feelings, is by strictly attending to your kind advice. I shall not permit myself to mention Sir R.’s name in any way.” With such a promise in his hands, with a knowledge of the favors which had been conferred upon Captain Somerset, viz. his having had most valuable grants of land made him, his having had leave of absence from the unpleasant frontier service, where his regiment was ; his having finally been appointed to the command at Simon’s Town, the great object both of his own and his father’s solicitude, Lieut.-Col. Bird, as he before said, did entertain hopes that Lord Charles Somerset would not refuse to receive Sir R. Donkin with that courtesy which his public duty required that he should. The representation nevertheless made to Lord Charles Somerset by his son, which he has quoted, to justify his outrageous conduct on landing, but, which it is now shown, was the result of a plan formed before his embarkation, brought on the explosion which had been comprehended, and originated all those consequences which have ever since troubled the peace of a once happy community, causing the ruin of many, and destroying the comfort and security of all. These consequences have been to none more afflicting and fatal than to Lieut.-Col. Bird, whose ruin, together with that of his numerous family, has been rancorously pursued ; yet he regrets not the part he took, far from it ; if it were possible that the past could be recalled, he would again attempt to prevent such ebullition, he would again risk the Vice-Regal displeasure, by doing the duties of a gentleman and a christian ; and he would not blush to have it said, that Sir Rufane Donkin complained that he was impracticable in his support of Lord Charles, and that he would not permit any topic to be introduced in his presence tending to censure the person who was the governor of the colony in which he held a high employment. If it be asked, how he came to correspond with Sir Rufane on the subjects which have now been brought before the public ? the answer is short : he did not correspond with Sir Rufane until all measures of conciliation had proved fruitless, until he found that he was attacked in England as well as at the Cape, and that nothing short of his entire ruin would satisfy Lord C. Somerset ; then, in self-defence, he opened himself to his friends,

and then it became necessary he should correspond with Sir Rufane Donkin, who was intimately concerned in what was the subject of daily discussion. The following extract of a letter from Sir Rufane Donkin will show that he had not written to that officer on any subject connected with his position, at its date, which is nearly a twelvemonth after Sir Rufane had returned to England. "Nov. 6, 1822.—I have to thank you for your letter by Cloete—I do not wonder at your 'delaying to write to me in hopes of more serene times,' and I can fully enter into the difficulty of *your* writing to *me* at all."

It would be very painful to Lieut.-Col. Bird's feelings were he to pass over those parts of Sir R. Donkin's pamphlet which occupy pages 105 to 109, without expressing his utmost gratitude for the manly and honorable testimony which Sir Rufane's letter to the Earl of Caledon, and his remarks upon Lieut.-Col. Bird's public conduct contain. He wishes it were in his power to use sufficiently forcible terms with which to express the sentiments of his heart on an occasion to him so interesting. He is indeed proud in having the incontestable proofs of his integrity and industry, which the speech of the Earl of Caledon and the letter of Sir Rufane have afforded him ; he is gratified in the extreme at having been thus defended and rescued from the obloquy which the person who had effected his ruin had industriously attempted to cast upon him. He has said in the onset of these explanations that he would not at present enter into any part of his personal case—that will be gone into at another and no distant period ; that pledge, and that only, prevents his now endeavouring to add to what Sir Rufane has so fully and so forcibly expressed as to the means which have been had recourse to, to vilify and misrepresent him. That his public conduct has been pure, that he has been indefatigably industrious, he knows, that he has sunk unheard, the victim of malevolence, is public ; but if he ultimately establishes these truths, (which, with such testimonials as the honorable and independent ones to which he is adverting, he thinks he cannot fail to do,) he cherishes the hope that his exertions will not be doomed much longer to be clouded by the displeasure of those who have been deceived into measures of hostility in his regard.

The circumstances under which Mr. Buissinne was appointed Receiver General of Land Revenue are correctly given by Sir R. Donkin in page 107. That case has already occupied so much public attention, and has been narrated in other places with so much accuracy, that he will not prolong the explanations here required by again entering into those painful details,* but it having been reported to him that Lord Charles Somerset has denied the circumstances of Mr. Buissinne's having been indebted to him in the sum of 26,000 rixdollars, or that he has stated to the Commissioners of Inquiry that he had no transactions whatever with Mr. Buissinne, it is requisite that it be here shown, that if the first was the assertion, it was a fallacy, and if the second, it was an equivocation tending to mislead the Commissioners of Inquiry. Lieut.-Col. Bird proposes subjoining to this a Memorandum explaining the whole Horse dealings of the partnership which existed between Buissinne and Proctor, with the latter of whom, (on account of the partnership) Lord Charles entered into the *transaction* which it is said that he has denied having had with the former ; Lieut. Col. Bird has authenticated copies of the deeds of partnership, to the period of its dissolution, which took place almost immediately after its formation, leaving Mr. Buissinne saddled with the stallions, mares, &c. &c. which had been furnished to the concern from the great horse bazaar, kept by the King's Representative ! he has notarial copies of the bonds passed, and transferred to Lord Charles, and he has in original the receipts of interest paid to Lord Charles, up to the period of the insolvency of Mr. Buissinne, from whose accounts it appears that the delusion of the speculation into which he was artfully enticed, mainly led to the ruin in which he was subsequently involved, that the whole cost of the concern was a total loss to him, and caused other expenses which contributed to his involvement. Lieut.-Col. Bird possesses Mr. Proctor's, and Lord Charles Somerset's letters *in original*, which shew that if the Commissioners have fully inquired into this transaction, their report must have been such as to preclude the possibility of its being true that Mr. W. Horton said that Lord Bathurst is perfectly satisfied with the explanations given by

* Since these observations were written, Mr. Fairbairn's clear *expose* of this case has reached the Colony.

Lord Charles on this point, or that the complaint of the proceedings against Mr. Buissinne is one which is unfounded, and grounded on statements which are untrue.

It has just been observed that Lieut.-Col. Bird has the several documents there alluded to in his possession; the following note shows the several dates and purport of those documents:

On the 4th of April, 1816, Messrs. P. S. Buissinne and W. Proctor entered into partnership, apparently for the purpose of forming a stud at the places Bontebok's Kloof and Bakkely Plaats, at the Buffeljagt's River, belonging to the partnership; of this a contract exists of the above date, to which is annexed a list of mares sold to Mr. Buissinne to the amount of <i>f</i> 23,135, or Rds.	7,700
together with the following charges for the covering of said mares by <i>Cottager</i> , as paid to Lord C. Somerset	700
Expences for the same at the Groote Post	400
	Rds. 8,800

On the 4th of May, 1816, or thereabouts, Mr. Proctor informed Mr. Buissinne, by a letter, that he had purchased *Cottager* from Lord Charles Somerset for £750, and a mare, Ann, for Rds. 4,000, for the partnership account.

On the 1st of October, 1816, however, only 6 months later, the said partnership was dissolved, when Mr. Buissinne purchased from Mr. Proctor a stallion named *Cottager*, two English mares, Betsy and Ann, 61 other mares, with several calves, and two bulls, the whole at the rate and for the sum of *f*.100,000, or Rds. 33,333, Cape Currency, for which sum said Mr. Buissinne was to execute a bond to said Mr. Proctor, bearing interest from the 1st day of July (past) 1816, stipulating that the capital should not be called in within five years.

On the 20th of March, 1817, a bond of *f*.100,000, with interest from July 1, 1816, was passed by Mr. Buissinne in favor of Mr. J. J. Vos (the father-in-law of Mr. W. Proctor) for the purchase, as is therein stated, of a stallion, called *Cottager*, two English mares, called Betsy and Ann, 61 other mares, with several foals, 80 cows, with several calves, and two bulls,

renouncing the exception of no value received, promising to pay the same with interest, at 6 per cent per annum, from the 1st of July, 1816, the capital not to be called in under five years. The collateral sureties to this bond were Messrs. C. Bird, J. W. Stoll, J. J. L. Smuts, G. J. Watermeyer, D. J. van Ryneveld, J. Osmond, and D. G. van Reenen, each for a 1-7th part.

Now it may here be asked what was the reason that this bond of *f*.100,000 was passed in favour of Mr. Vos, *and not of Mr. Proctor*, as it appears by the previous act of October, 1816, that those horses and other stock had been purchased by Mr. Buissinne from Mr. Proctor, and not from Mr. Vos! Should it be supposed that Mr. Proctor was indebted to Mr. Vos to such amount, and paid such debt by causing said bond to be passed in favour of his creditor, Mr. Vos, it will appear that this could not have been the case, as on the 1st of April, 1817, that is, only ten days later, Mr. Proctor repurchased from Mr. Buissinne two mares, and a foal, being a part of the number of horses which Mr. Buissinne had by the act of 1st October, 1816, purchased from Mr. Proctor, for *f*.22,000. This amount went in part payment of said bond of *f*.100,000, and was made payable to Mr. Vos, *and a receipt for said amount was on that very 1st April, 1817, noted at the foot of the bond.*

On the 14th of May, 1817, that is, one month and a half subsequent to the foregoing transaction, Mr. Proctor appears before the Notary Beck, and there states to be indebted to his father-in-law, Mr. Vos, a sum of *f*.150,000, and to his two sisters, the one a sum of *f*.40,000, and the other a sum of *f*.20,000 amounting altogether to *f*.210,000, for which he undertook to pass three mortgage bonds for each of those amounts, under this proviso, however, that Mr. Vos *doth transfer to him, Mr. Proctor*, the bond-paper passed by Mr. Buissinne in his favour for *f*.100,000, then reduced to *f*.78,000, owing to a deduction on account of a part-payment, as noticed before, and it appears that on this very 14 May, 1817, said bond was transferred by said Mr. Vos to Mr. Proctor, as may be seen from a transfer on that date, at the foot of the bond, while three days later, that is on the 17th of May, 1817, the said bond of *f*.78,000 was transferred by Mr. Proctor to Lord

Charles Somerset, *without its appearing in said act of transfer, what value he, Mr. Proctor, had received for it from Lord Charles Somerset.* From whence it may be inferred that this transfer was made to Lord Charles Somerset, to pay him for the horses which he had sold to Mr. Proctor, and to the partnership of Messrs. Proctor and Buisinne, as appears from No. 1 and 2.

What the real motive was that induced Messrs. Proctor and Buisinne to enter into a partnership that was soon after to be dissolved, does not appear on the face of the documents here referred to, but it certainly had the effect of procuring for Lord Charles Somerset a purchaser for his horses to a large amount, for in the end it is shown that Mr. Buisinne was the actual purchaser, although the transaction had been made to pass through the form of a partnership.

Nor does it appear from those documents why so circuitous a mode of payment to Lord Charles Somerset was adopted. Mr. Vos seems to have been introduced only *pro forma*, for it is clear that he, an old man, who had always resided in Cape Town, and had there been engaged in large concerns of a totally different nature, never had a Stud, nor made any speculation in those dealings. But what is still more conclusive as to Mr. Vos never having had any interest in the Bond so passed in his favour by Mr. Buisinne is, that he (Mr. Vos) became himself counter-security for the sureties, Messrs. C. Bird, J. W. Stoll, and others named therein; thus becoming a surety to a Bond passed in his own favour! *vide* Certificate of the Court of Justice Office, where the transaction had been duly entered.

The circumstances which have lately again forced forward the case of Mr. Buisinne, render it inexpedient to enter into that case here. It is said that the extraordinary proceedings instituted against him are consonant with Dutch Law and Colonial Practice, if they be so, which Lieut.-Col. Bird does not acquiesce in admitting, he can only say, that they afford a forcible proof of the necessity of altering laws based on injustice, and affording to the person charged with their execution the means of using them for purposes of private revenge.

In furtherance of Lieut.-Col. Bird's determination not to enter at present into his own case, he passes over all Sir R.

Donkin has adduced relative to Mr. W. Parker, whom Lord C. Somerset sent home at public expense, as Sir R. Donkin shows; but a quotation having been given in the second Appendix (page 14 of *Greig's* edition) from a communication made by Lieut.-Col. Bird to the Commissioners of Inquiry, which alludes to the harmony which prevailed in this Colony on the subject of religion until the arrival of Mr. Parker, and until the support his bigoted enthusiasm received at Government House became subjects of notoriety. It is indispensable to show on what this assertion is grounded. It must be premised, that all denominations of christians are not only tolerated by the laws of the Colony of the Cape of Good Hope, but that they are by those laws placed on an entire equality,—there is no pre-eminence. The catholics were numerous in the Colony, but they had had no minister until the year 1820, when the Bishop of Ruspa with the assent of Earl Bathurst left a missionary here, when on his way to Mauritius. The catholics were numerous among the settlers, one third of the troops in garrison at least was catholics. The minister, on his arrival, was well received by all classes, and his appeal to the public for aid in building a place of worship for his community was met with enthusiasm, the principal civil servants subscribed, the clergy of *all* denominations gave their donations, the public gave liberal aid, and the town magistracy, as the corporation of London had done before them, gave an eligible site for the intended construction; nothing can be more clear therefore than the state of public feeling at the time. When the emigrants were invited in England to settle in South Africa, Earl Bathurst held out a promise of provision to the minister of *any* denomination of christians, who should accompany a party amounting to 100 families; under this clause, and in consideration of the duties which the catholic minister had to perform in the military hospitals, when so large a proportion was of that persuasion, Sir R. Donkin allotted to the catholic minister a salary of £75 per annum. Thus did every thing go on harmoniously until Mr. Parker sounded forth the trumpet of discord on this subject; but his exhortations had little effect until it was known, on the arrival of Lord Charles Somerset, that his Lordship had taken his line with respect to Roman Catholics.

It would be to suppose persons very ill informed of the state of society in colonies, if it were thought necessary to prove the great extent of influence the opinions of Government House command. To be in disgrace at Government House is nearly to be banished society; to offend a Governor is nearly to become an outlaw. No one dares to look at, or to greet the individual who has incurred vice-regal displeasure; few venture to give opinions not consonant with those of the Arbiter of Wisdom, who presides over the fortunes of every member of a Colonial community. During the many years in which a Deputy Adjutant General was neither permitted to do the duties of his office, nor admitted within the precincts of the palace, communing or not communing with him was the touchstone of Colonial Loyalty—one person who had been introduced into the Governor's family by the influence of this officer before he had given offence, made a merit with his new patron of cutting the man to whom he was indebted for his introduction to him, and it has well succeeded to him. This may serve to show the characters of both parties, and at the same time exemplify the sort of adulation required and obtained from colonial society, and this will explain the almost immediate change in public opinion with respect to the Roman Catholics, and which took place as soon as it was known (and it was industriously circulated) that Lord Charles Somerset's hostility to Catholics was as outrageous as that of Mr. Parker. The Catholic missionary had waited on his lordship on his arrival, when, instead of receiving him with courtesy, to which every one is entitled from the representative of a mild, liberal, and beneficent sovereign, he lost all temper with him, he told him he knew of no authority to make him any Colonial allowance, Lord Bathurst did not approve of it, that he should discontinue it; that his family voted against the Catholics, and that he would go 6,000 miles bare-foot to put them down. This anecdote Lieut.-Col. Bird has in writing from the Rev. Mr. Scully: the allowance was consequently withdrawn; the courtesy shewn the Catholic Minister from that moment sensibly declined, and it became fashionable from thence to be in appearance Anti Catholic. Will it be said that the Commissioners, in reporting upon the expression quoted from Lieut.-Col. Bird's communication, have not confirmed this view

of the two periods of Cape Society ? or will it be asserted that Lord Bathurst has approved of Lord C. Somerset's bigotry and discourtesy ? The answer is in the negative, and is proved from the fact of Lord Bathurst having subsequently approved of salaries being granted to two Catholic Ministers instead of a pittance to one, having given to each £100 sterling instead of £75 to one, besides which it is said, that on the presentation of a Petition from Mr. W. Parker to the House of Lords, Lord Bathurst took occasion to observe, that if Colonel Bird had inquired whether Mr. Parker had brought a Priest from Ireland with his party, he had done his duty in so asking, for that he, Lord Bathurst, had promised a competent provision to such a minister who should accompany a party of emigrants to the Cape. Is this the supposed approval of Earl Bathurst ? or is Lieut.-Col. Bird right in attributing the assertion upon which he is commenting to be a gross error of a newspaper reporter ?

An allusion to a set of warrants which were quashed, in order to take advantage of a rise in the exchange to alter the average which had been struck by the Commissary for the quarterly payments, forms the subject of one of Sir Rufane's paragraphs (p. 14 of Greig's edition of the second Appendix). Certain queries had been put to Col. Bird by the Commissioners, on the subject of the depreciation of the colonial currency ; his opinion had invariably been that the mode of paying the Civil Servants of the Colony at the average rates of exchange of the quarter preceding such payments had greatly tended to enhance that depreciation ; it became the interest of the Civil Servants that the premium on the bills should rise ; that is, that an additional quantity of paper currency should be given for each pound sterling, by which the number of rixdollars which each civil servant (paid on the sterling list) received was increased, which, as their payments were effected in rixdollars, without reference in most things to the rate of exchange, was considerably advantageous to them. To explain this more clearly, suppose a civil servant, whose salary was £1000 per annum, had £250 to receive for his quarter's salary, at the par of exchange, that is at five rixdollars to the pound sterling, he would be entitled to 1250 rixdollars, but when the exchange had gradually been enhanced to 100 per cent

premium (or discount, as it is called by the Commissary), then he obtained for his quarter's income 2500 rixdollars. But his expenditure bore no proportion to this rise in the most important items ; for instance, his house-rent : it is customary at the Cape to purchase, not rent your house, the purchase money not being paid down, but remaining on mortgage ; supposing the house to cost 20,000 rixdollars, the interest whereof is, at the Colonial rate of 6 per cent, 300 rixdollars per quarter ; this amount of rixdollars varied not, whether the exchange was or was not at par, at the rate of 100 per cent premium it is clear that the civil servant's rent was reduced one-half, that is instead of having £60 to pay for his quarter's rent, he only paid £30. Now, to elucidate the error of this system to the Commissioners, Lieut.-Col. Bird adduced this instance, which was then recent, of the warrants for the payment of the civil servants for the preceding quarter having been quashed, and new warrants made out on a new average, in which the *tenders* made on the last day of the current quarter, but which were only drawn for on the second day of the ensuing quarter, were included. The exchange in those tenders had so considerably risen, as by including these with the drawings of the lapsed quarter, it made a difference in the payment of each civil servant of full one rixdollar in each pound sterling. But as before the *drawing* has actually taken place, the transaction of which the *tenders* are a mere preliminary step is not complete,* the drawing made on the second day of the new quarter should not have been included in the average of drawings of the lapsed quarter.

This was a very extraordinary measure, in which many circumstances occurred which were deserving the Commissioners' notice. The certificate of the average of the preceding quarter had been furnished by the head of the Commissariat

* Should any unforeseen circumstance take place that would prevent any of the tenderers from meeting the amount of his tender, it is clear that a new tender would be called for to the amount of the deficiency. That such a circumstance may occur will be easily understood from the fact which is notorious and of constant occurrence, that when the tenders are accepted, those who have made them go to the Bank with Bills, Vendue Rolls, &c. to have them discounted, in order to make up the cash required for the purpose. Should now the Bank see reason for objecting to make such discounts, the party concerned may find himself unprepared to make good his tender.

Department, the Auditor had examined and certified its correctness to the Colonial Paymaster, who had thereupon prepared the warrants, for the Governor's signature. All this was annulled, because a plea was found for increasing the payments in rixdollars; the order to make the alteration was given by Lord C. Somerset to Mr. Brink, who communicated it to Colonel Bird, to whom he immediately observed its incorrectness, but the measure went on, and was so much in point to the information required by the Commissioners that Lieut.-Col. Bird communicated it to them in his replies to their queries on the Paper Currency. Since his return from England, Lieut.-Col. Bird has been informed that the Auditor and Colonial Paymaster were called upon, either on this occasion or on a subsequent one of a similar nature, to give their opinion to the Governor as to whether the Civil Servants were or were not entitled to the advanced average under the circumstances adduced, and that they were of opinion that the Civil Servants were entitled to it. Lieut.-Col. Bird has also been informed that the Commissioners made this a point of research; what their opinion was will probably not transpire, but it is said that one of them observed, that it was to be regretted that persons not interested in the result of the decision were not employed to report on the claims of the Civil Servants in this instance. It is also remarkable that the circumstance of the subject having been referred to the Auditor and Paymaster for report, (if so referred at the period to which his remark relates), was sedulously concealed from the Secretary to Government, he learnt the fact accidentally after his return in 1826. Why this should have been concealed from him (if it took place at that time) is certainly remarkable, nor is it easy to account for it, unless it was lest he should communicate to the parties who formed the Committee what his sentiments on the propriety of the measure were, and thus have influenced the report, and perhaps have prevented the improper transaction; his opinion remains as it was when he communicated with the Commissioners on this head. Lieut. Col. Bird has gone more fully into the explanation of this case than seemed to him at first necessary, in consequence of some inaccuracy in Sir Rufane's paragraph: he has therefore been induced to give the whole transaction as his recollection brings

it to his mind—whether it has been worthy of any especial notice on the part of the Commissioners of Inquiry is to him immaterial ; it was a plain matter of fact, from which they may or may not have made deductions ; its accuracy, at least in all essential parts, is on record and traceable, but where concealment took place under such circumstances as those here noticed, it is possible that some discrepancy may appear between these recollections and the more studied statements prepared for the Commissioners in another quarter. Certain it is that His Majesty's Government has taken steps to obviate a recurrence of such practices, which is a clear proof that they cannot have been satisfactorily explained to the Secretary of State, and it is very clear, from the Report of the Commissioners on the Currency, that they were not prepared to sanction measures of the nature of the one Lieut.-Col. Bird has been now discussing ; they have stated their disapproval of the manner in which these sterling salaries were paid ; neither does that report confirm the assertion attributed to Mr. Horton, for it is difficult to suppose that Lord Bathurst can have expressed himself so decidedly satisfied, after considering the strong opinions given by the Commissioners on the effect which the total disregard, on the part of Lord Charles Somerset, of Lord Bathurst's Instructions had had on the general interests of the Colony : it is not Lieut.-Col. Bird's intention by this allusion to express an assent to the Commissioners' conclusions, but he points it out to shew that it is not to be conceived that Lord Bathurst had so entirely set at nought opinions so decidedly marked.

Lieut.-Col. Bird perceived with great regret that Sir Rufane Donkin had alluded to the view he, Lieut.-Col. Bird, had taken of the conduct of the Commissioners of Inquiry in his regard, because it opens a new subject which does not appear to him either to enhance or to take from the merits of the principal case. Lieut.-Col. Bird certainly felt that the Commissioners of Inquiry did not act towards him with the impartiality, in his opinion, becoming their high office, but he told them what he thought without disguise, and that in his view was enough ; it is now forced on. The complaints of Mr. Parker, to reply to which required access to those documents and papers which contain the proceedings of the colonial authorities on the

subjects, and which were only to be found in the office of the Secretary to Government, were not gone into until Lieut.-Col. Bird had been removed from office, although these complaints had been preferred against him more than 3 years ; within a *few days after* Col. Bird's removal from the Secretariat, they were brought forward—and how ? Mr. Parker's complaints and statements were not put into Col. Bird's hands, not a single paper of Mr. Parker's was he made acquainted with ; but the Commissioners made the griefs their own, and framed detailed charges by order of the Secretary of State from those, against Lt. Col. Bird. To these charges, ten in number, with various subdivisions, he was called upon to reply. Lt. Col. Bird has always believed, and continues to think, that the Commissioners did not act in this part of the case by Lord Bathurst's orders, or under his Lordship's instruction ; that *they*, to serve some purpose, substituted themselves for Mr. Parker ; for how can he suppose that the Secretary of State of the British Empire would have directed or authorized such a charge as the 7th to be preferred against any one, it is revolting to think it, and Lt. Col. Bird acquits him entirely of it ; he is the more convinced on this subject, since he is sure that all those who have experience of the Commissioners' mode of acting, will readily admit, that they must have penned the following charge :

That through liberal remittances made by Col. Bird from the Cape of Good Hope to his Brother the Rev. John Bird, the Jesuit Priest at Preston, and to his Sister, Miss Bird, who conducted a Nunnery or Convent at Taunton in Somersetshire, this and the Jesuit Establishment at Stoneyhurst have largely prospered !

The mode of proceeding which these Inquisitors adopted was, Lt. Col. Bird believes, quite unprecedented in modern times ; they secretly examined whatever witnesses they chose to call upon, and *those only*, they did not make the accused acquainted with any part of what was elicited, except when Lord Charles Somerset was the party concerned ; he was not called upon to reply to any part of what was to implicate him ; all this was carefully concealed from him ; that is as carefully as they could conceal it, for much of the matter and manner were communicated to Lt. Col. Bird by the examined parties, as soon as their ordeal was over. He believes, that every art

was had recourse to, to implicate him in some way or other ; and as at this time he was labouring under the displeasure of the Governor of the Colony, and “ every direct and indirect means were using to vilify and misrepresent him,” it is no small triumph to know that the Inquisitorial arts entirely failed in the desired object. The conduct of the Commissioners in this matter was fresh to his wounded feelings, when they opened a correspondence with him on the subject of the Currency ; then, he brought to their recollection their first resolution in his regard, and reminded them, that as they had not called for information when he had the means of affording it with safety to himself, and satisfactorily for the objects of their inquiries, he considered them to have no right to question him farther. In answer to which they haughtily say, “ It is not our intention to enter with you upon the motives that induced us to acquiesce in the arrangement that was proposed to us by Lord Charles Somerset, soon after our arrival, for conducting our correspondence with the Colonial Office,”— avowing thus, that they acted in the manner they did, at Lord Charles’ suggestion, which circumstance, considering the state of the Cape Colony, and the various rumours which were known to be afloat, must be considered by every impartial person as a determination of a very extraordinary nature ;— Lt.-Col. Bird replied as follows :

I had no other object in my letter to you of the 8th, than to point out the unfairness that is manifest in now applying to me for information, which was, from whatever cause, not sought for when I had the means of affording it with security to myself and probably with satisfaction to you. I continue to view this in the same light, and feel moreover that your present communication ought not to have been addressed to me. *I have no documents to refer to. I have no memoranda to elucidate the abstruse matter which you put to me ; I know that it would take a pamphlet to reply with the accuracy and precision they require to the queries of your letter.* Moreover I cannot think nor admit that you have any further claim upon me, under which you assume to require this or any other information from me on official subjects. My crippled state has alone kept me in this Colony, and the impossibility I am in of leaving this Colony until some favourable change may shew itself with respect to me. Mr. Bigge told me that the only information that would be required from me before I went, would be relative to the erf in Strand-street, and now it is wished to engage me in a correspondence, of which there is no foreseeing the end. Besides, notwithstanding all my caution, notwithstanding the assurance that you do not require me to pledge myself to the statements you

call upon me to make from recollection, you demand from me "*precise authority*" for an opinion I have hazarded; notwithstanding all my caution you misinterpret my words to assert that I have protested against your proceedings, when the truth is, I have done no such thing, but have protested against being held responsible for inaccuracies of statements and opinions which I had no documents or data to support, and notwithstanding all the caution I have used, the opinions I have ventured to give have not escaped the sneering taunt of being termed "very decided opinions."

Thus Lieut. Col. Bird endeavoured to point out forcibly the situation in which he was placed by their singular conduct, but as they insisted on their right to exact information from him, he gave from memory the best he was able, wording, however, his replies in such manner as should lead them to make further inquiries, by which he would have been brought to the necessity of referring to proofs, which *then* would have been within their reach. In this he was disappointed, for, after their 38 interrogatories on the subject of the duties, and mode of conducting the duties, of the Secretarial department, their correspondence with him, except perhaps upon some trifling objects, ceased, and the grave matter which he was thus compelled to meet remained unattended to.

Personally he was pleased at this result, but he did and does consider it to have been a dereliction of a sacred duty, for the purpose of screening the individual to whom, by every act of the Commissioners, they appeared to every one here to have been mere special pleaders. He sought not to correspond or communicate with the Commissioners; their queries, which he believes to have been drawn up with the intention of entangling him, may have produced explanations unpleasant to the object they had in view; they were therefore not followed up; but Lieut.-Col. Bird again asserts what he told Mr. Bigge in the very last letter he had occasion to address to him, that he was compelled by the mode they adopted to bring before them the information they obtained. Whether the information he gave, part of which Sir Rufane has now brought before the public, is of a sufficiently weighty nature to deserve that it should be further inquired into, Lieut.-Col. Bird will not hazard an opinion, but he trusts that no one can have read what has here been stated, without being convinced of the accuracy of Col. Bird's replies to the Commissioners, and with that impression it will be difficult to think that Earl

Bathurst can have been satisfied with the explanations given thereon.

Some inconsistency having been imputed to Lieut.-Col. Bird, as he has been informed, relative to Lord C. Somerset's French servant, Mercier, it may be well to state here what occurred with respect to that person. Lord Charles Somerset having been about to part with him, spoke highly of him to Lieut.-Col. Bird; said he was a very scientific man, and well versed in the classics, to which Lieut.-Col. Bird replied that nothing was more wanted at the Cape than competent teachers of the classics, and that if Mercier, in addition to this, would read courses of lectures, he would not fail to succeed. It seems Lord Charles spoke to the man, and then sent Lieut.-Col. Bird the following letter, urging his being placed in some office:—

I send my unfortunate man to you, that you may talk a little to him, and see what he is made of. He does not feel himself sufficiently qualified in the sciences to undertake to lecture, nor does he seem willing, or is he indeed confident enough in himself, to undertake to teach the classics, altho' he understands them. He says he has turned his mind to agriculture, and has written a treatise upon it, and also upon the cultivation of the vine, copies of which he will shew you. He is so fond of study, and has such intense application, that if Mr. Fallows wanted an assistant, he would in a little time qualify himself so as to be of great use. He is the only Frenchman I ever saw who writes an excellent hand.

You will perceive that his manner is far above the common run, without any of the flippancy of a Frenchman. He is so overwhelmed by his failure with me, that I am very anxious to do something for him, believing him, as I do, to be a most respectable man.

Lieut.-Col. Bird may or may not upon this have pointed out what office he might most conveniently have been placed in, and perhaps (for he does not really recollect) he may have suggested the Inspector of Government Lands' Office, but when Lord Charles asked him to open the subject of the letter to Mr. D'Escury, he told his Lordship that Mr. D'Escury would not like the thing, and that the readiest way for his object to be carried was for his Lordship to speak himself to Mr. D'Escury; this his Lordship did, and Mr. D'Escury, as Lieut.-Col. Bird had foreseen, declined receiving the man into his office, a circumstance which gave great umbrage to the Governor, and was the first and perhaps principal cause of the utter dislike which Lord Charles imbibed against an honour-

able a man and as indefatigable a Public Servant as ever was in a Government employment; in 1825 the Commissioners of Inquiry wrote a letter to Lieut.-Col. Bird, to inquire, whether it was true that Lord Charles had attempted to place his French valet in Mr. D'Escury's Office, when Lieut.-Col. Bird acquainted them that he certainly had, after having failed in procuring for him, as he had heard, the situation of Asst. Astronomer, and that Mercier was subsequently placed in the office of the Inspector of Slave Registry, Lieut.-Col. Bird having recommended the Inspector of that Department not to object to receiving him, as he was inclined to do, lest he should displease the Governor as Mr. D'Escury had done. Lieut.-Col. Bird is quite at a loss to see what inconsistency there was in this.

But it is time to bring this to a conclusion: this will be done by a brief recapitulation of some of the heads of what may be termed the Complaints against Lord Charles Somerset's administration, and of the measures by which the Secretary of State has shewn his satisfaction at Lord Charles' conduct of the government at the Cape of Good Hope.

The British part of the population settled on the Eastern Frontier had complained of want of attention to their interest, and of acts which might bear the name of having been tyrannical; his Majesty's government sent a Lieutenant-Governor to reside in that part of the Colony solely, and to be in a great measure independent of the Governor. Many arbitrary acts were imputed to Lord Charles, and after inquiring into them, a Council was ordered to control the power, which up to that period a Governor had possessed in South Africa. The wasteful expenditure at Newlands had been pointed out and strongly censured; an order has been sent by the Secretary of State to dispose of it, and the estate is actually divided into lots for the purpose of being brought to the hammer without delay. The objects to which the funds and lands of the Groote Post had been diverted, had been pointed out to the Secretary of State; this complaint, after having been inquired into, has terminated in the receipt of directions from Downing street, to sell or let the lands of which that chace consisted. The dreadful expence of the Cape Cavalry was remarked; its inutility was shewn, and this it may be supposed was strictly

investigated, the result is, that an order for its reduction has taken place, which circumstances, unconnected with colonial expediency, have hitherto prevented, but the orders will at no distant period be acted upon. Thus in all these points, and they are principal ones, the satisfaction of the Secretary of State with Lord Charles Somerset's measures must at least have been greatly qualified; and doubts must generally remain as to the accuracy of the reports of the debates of the 18th of May last, doubts which will only be entirely cleared away, by the return of Lord Charles Somerset to the Government of the Cape of Good Hope, instead of which, at the moment of sending this to the press, it is confirmed that His Lordship has resigned!

LIESBEEK COTTAGE, 1st September 1827.

[Original.]

Letter from SIR RICHARD PLASKET *to* R. W. HAY, ESQRE.

CAPE OF GOOD HOPE, 2nd September 1827.

MY DEAR SIR,—I beg leave to express my sincere thanks for the kind attention you have paid to all my communications from this Colony, and especially for the interest you have shewn in regard to the personal application I made for leave of absence or retirement on account of my health.

I beg also you will express to Lord Goderich how grateful I feel for the leave of absence he has granted me, with the option of resuming my post (though on reduced salary) within the period of two years. The arrangement his Lordship has made, however, by appointing Colonel Bell to act for me with £2,000 a year and for granting me £500 will totally preclude me from the advantages I anticipated under Earl Bathurst's regulations, and which have been enjoyed by every Civil Servant of this Government, viz. of receiving the half of my salary during the period of my leave of absence, the *locum tenens* drawing the other half. I looked forward to this indulgence as the only means of recompensing me for the heavy loss I must sustain in selling my house in Cape Town, and which I purchased solely

on a hint from the Commissioners of Enquiry that they disapproved of the Colonial Secretary living in the country, as had hitherto been the case, and as I was about to do myself; and that it was their intention to recommend to Earl Bathurst that he should have a residence in Cape 'Town.

I presume Lord Goderich was not aware of the Regulations of Earl Bathurst (which I herewith enclose), and that the principle upon which the allowance of £500 is fixed has reference to the Regulations adopted in the Government Offices in England, that where a reduction of salary or office takes place, the retired allowance is fixed at one half of the saving accruing to Government, but even on this principle the saving which will accrue to Government by Colonel Bell's appointment and by the reduced salary of Colonial Secretary should I ever resume the duties, will be £1,150 per annum, and the retired allowance £575, and I trust under these circumstances His Lordship may be pleased to authorise £600 instead of £500.

You have been so kind to me that I feel less delicacy in troubling you with my pecuniary affairs, and I confess the sudden reduction from £3,150 per annum to £500 came upon me very unexpectedly. I am at least £2,000 poorer than when I left Malta. You are perhaps aware that when this situation was offered to me I was Chief Secretary to Government of that island. From the day I accepted it, my pay at Malta ceased, and I drew no salary whatever until my arrival here. I had to sell off in a hurry at Malta to pay the expenses of my journey home and voyage out, and to set up a new establishment here.

I did this perhaps on too large a scale, but it was with reference to the handsome salary attached to my situation, and to the idea that I should make a longer residence here than I am likely to do.

I am again obliged to sell off, and in the present bankrupt state of the Colony and the projected reductions in the salaries of the Civil Servants, there is no one here who can afford to buy anything. I shall therefore be a considerable loser, chiefly in my house in town, which cost me all the money I had in the world—£5,000.

Under these circumstances I am sure Lord Goderich will not feel displeased at my remaining here a few months longer to

give me time to dispose of my property. Indeed I should not wish to encounter the severity of an English winter on my first arrival, and I shall be inclined if an opportunity offers to go home via South America and to remain a month or two there.

It is possible I may not have left the Cape before an answer could arrive to this letter, and I should therefore feel grateful to you for a few lines in reply. My health is better now, owing to the effects of the Mercury, but I am satisfied nothing but change and a total cessation from business for a long period will set me up again.

I rejoice at my friend Colonel Bell getting so good a berth, he and Lady Catherine have been living here for a long time in circumstances very different from what they deserve to be in. The Colonel is gone to the Frontier with General Bourke, in consequence of the invasion of the Massoutee Tribe of savages as communicated to you in my letter of the 26th ultimo. They will be absent at least six weeks, even if matters go on well, so that the arrangement for his taking my post could not take place at present. I trust you will excuse my troubling you on this occasion with my private affairs, and remain &c.

(Signed) RICHARD PLASKET.

P.S.—I hope the Judges are on their way out, and that they may have some spare cash to invest in Landed Property here.

[Notice.]

DOWNING STREET, 3rd September 1827.

The Right Honorable Lord Viscount Goderich having this day resigned the Seals of the Colonial and War Department, they were thereupon delivered by His Majesty to the Right Honorable William Huskisson who was sworn in Secretary of State accordingly.

[Original.]

Letter from SIR RICHARD PLASKET to R. W. HAY, ESQRE.

CAPE OF GOOD HOPE, September 3rd 1827.

MY DEAR SIR,—You are aware from my previous correspondence that I fully anticipated the sensation that would be created in England by the suppression of Mr. Greig's Licence, and I equally anticipated that the manner of doing it and the grounds thereof would be unsatisfactory.

The Lieutenant Governor and I thought it over attentively and saw the difficulty and delicacy of the case, but I know not how it was possible we could have acted otherwise.

You must recollect that by Lord Bathurst's instructions Mr. Greig's Paper was placed specially under the control of Council, that the Council were to watch its progress, and to warn him when he overstepped the limits of his Prospectus, *before taking any measure against him.*

In the spirit also of these Instructions Mr. Greig was authorised to discuss *temperately* the Public Acts of Government, with the exception of any specific subject, the discussion of which at all might be deemed by Council to be inexpedient, such as the Slave Question, &c.

The tenor of these Instructions, therefore, made it incumbent in some measure on the Council, in the event of their interfering with Mr. Greig, to point out the obnoxious article in giving him warning, as well as in taking away his license, and this would have been still more incumbent where the article was not of a public or political, but of a *personal nature*, as in the case in question. But the Order of Lord Bathurst admitted of no discussion in Council. It was peremptory, and the ground upon which it was issued was distinctly specified.

Had the Council, therefore, carried it into effect they would have acted contrary to their Instructions, *Instructions of which Mr. Greig was in possession.*

Had the Lieutenant Governor withdrawn the license by a simple order from Lord Bathurst without any explanation whatever, the natural feeling would have been that the Council, without warning Mr. Greig, had made complaint

of so strong a nature against his paper that Lord Bathurst had been induced on their representation to withdraw his license; and Mr. Greig would have had good reason to conclude that the Council had betrayed both him and the Public.

The public sensation would have been still stronger, and Mr. Greig would immediately have published his correspondence with your office (which he threatened to do once before), to shew how he had been deceived, and which must have led eventually to explanation in England.

As to the hope expressed by you that we have been enabled to set up another paper, I can assure you that I have tried everything in my power so to do; and I sounded Mr. Bannister (a lawyer and man of ability who has lately arrived here from New South Wales to study our Colonial Law with a view to practise in the new Court), but without effect. In fact the public feeling is so strong in favour of Mr. Greig since the suppression of his paper, that I am convinced no attempt would have succeeded, unless it had been backed up by the Government Advertisements and Public Acts, and the reduction of the *Government Gazette*. I have &c.

(Signed) RICHARD PLASKET.

[Original.]

Letter from MR. J. G. SWAVING to R. W. HAY, ESQRE.

LONDON, 4th September 1827.

SIR,—Understanding that in order to be permitted to proceed to the Cape of Good Hope, it is necessary for me to obtain a passport from the Colonial Office, I have humbly to solicit a passport accordingly on the enclosed documents, which certify my situation and residence here and object in going to the Cape.

I have further to solicit the favour of the passports being granted with a return of the alien documents without delay, as the *Luna*, commanded by Captain Knox, sails on Thursday next, this being very important to me as my family embark

at the same time, and an engagement mutually advantageous having been entered into between Captain Knox and myself.

I have &c.

(Signed) JUSTUS GERRARDUS SWAVING.

[Office Copy.]

Letter from R. W. HAY, ESQRE., to MR. JOHN CARNALL.

DOWNING STREET, 5 September 1827.

SIR,—I have received the direction of Mr. Secretary Huskisson to acquaint you that His Majesty has been graciously pleased to remit to you so much of the sentence under which you have been banished from the Cape as remains yet to be undergone by you, and that you are consequently at liberty to return to the Colony whenever you think proper.

I am &c.

(Signed) R. W. HAY.

[Office Copy.]

*Letter from the RIGHT HON. WILLIAM HUSKISSON to
MAJOR-GENERAL BOURKE.*

DOWNING STREET, LONDON, 6th September 1827.

SIR,—The King having been graciously pleased to remit to John Carnall so much of this Individual's sentence of banishment from the Cape as remains yet to be undergone by him, I transmit to you accordingly His Majesty's Pardon to the said John Carnall, of which it will be your duty to take care that he receive the benefit, if he should think fit to return to the Colony. I am &c.

(Signed) W. HUSKISSON.

[Original.]

Letter from W. HILL, ESQRE., to R. W. HAY, ESQRE.

TREASURY CHAMBERS, 6th September 1827.

SIR,—The Lords Commissioners of His Majesty's Treasury having had under consideration a report dated 27th ultimo from the Commissioners of Colonial Audit, further on the subject of the instructions relative to the expenditure of the Cape of Good Hope, and accounting for the Colonial Revenue of that Colony; I have it in command to transmit to you the revised drafts of instructions to certain officers of the Cape, enclosed in the said Report of the Commissioners of Colonial Audit. And I am to request that you will move the Secretary of State to cause them to be forwarded to the several officers for whose guidance they are intended, and I am also to transmit to you for the information of the Secretary of State a copy of the aforesaid Report of the Commissioners of Colonial Audit explaining the principles upon which the same have been prepared. I am &c.

(Signed) W. HILL.

[Enclosure in the above.]

COLONIAL AUDIT OFFICE, 27th July 1827.

MY LORDS,—In compliance with your Lordships' directions conveyed to us in Mr. Hill's letter of 28th ultimo, we have revised the instructions relative to the expenditure and accounting for the Colonial Revenue of the Cape of Good Hope, submitted in our report of 8th December last, with reference to the suggestions contained in the Reports of the Commissioners of Colonial Enquiry upon the establishments and finances of that Colony, keeping in view that it is not intended to institute a separate Government for the eastern portion of it.

These Instructions were framed with the view of ensuring, as far as possible, that the whole of the Public Revenue should be duly and promptly accounted for, and that the expenditure of it should be efficiently controlled and checked.

It was accordingly provided that the whole of the public money should be placed under the charge of one officer, by whom every disbursement of every description should be made, and who should render the accounts and be responsible for their correctness.

This officer was not to make any disbursement without an order from the Governor, with whom, subject to the directions of your Lordships and the Secretary of State, all the financial arrangements would rest. But as it has been considered an established principle, and was explicitly laid down in a despatch from Lord Liverpool to the Governor of the Mauritius (14th February, 1812), that "the discretion which is given to the Governors of all Colonial Possessions in the expenditure of public money is very limited, and extends only to those instances wherein the public interests would be prejudiced by the delay of applying for authority from home," which authority must in all other cases "be indispensably required"; the Governor was restricted as far as possible from incurring expenditure without the previous concurrence and authority of your Lordships and the Secretary of State. He was also prohibited from altering the public taxes and dues, or impairing the future resources of the Colony by incurring debts or alienating the public property, without such previous concurrence and authority.

The Governor, instead of being subjected, as heretofore, to an undefined and undue responsibility as Public Accountant for all the receipts and disbursements of the Colony, was held responsible only for his own authorities, and for the exercise of the discretionary power necessarily vested in him; and at the same time every precaution was adopted to prevent his unadvisedly incurring that responsibility.

The details of the collection of the revenue were left to be regulated, examined into, and checked by the local authorities; provision being made that such accounts and documents should be transmitted to this country as would at all times afford every requisite information as to the nature and produce of each branch of the revenue, and the mode of collecting it, and also that the application of it should be strictly accounted for to your Lordships, and that all the accounts rendered should be made up in a clear and perspicuous manner, and in

close accordance with the facts of the transactions comprised in them.

The Commissioners of Enquiry propose numerous and very important alterations in the system of taxation heretofore in force, and in all the Departments of the Colonial Establishment, but we do not conceive that the general principles and arrangements to which we have adverted, and in regard to which it was the object of the Instructions already before your Lordships to establish regulations, are at all affected by these alterations. In some respects the recommendations of the Commissioners are in perfect accordance with the views we had adopted; as for instance in the abolition of the office of Colonial Paymaster, and the making the Treasurer the accountant for the revenue and expenditure.

The only point which has appeared to us to render further specific instructions necessary is the appointment of Civil Commissioners, who are to be charged with the collection and custody of the Revenue arising in the Districts at a distance from the seat of Government, and will consequently become entrusted with and accountable for the Public Money.

The additional regulations incident to the appointment of these officers are comprised in articles 3, 5, 6, 7, 8, 9, 26, 61, 64, 74, 75, and 79 of the instructions to the Governor, and articles 1, 2, 5, 6, 8, 11, and 22 of those to the Treasurer. In drawing them up we have proceeded upon the system established with respect to the District Collectorships in Ceylon, by which the accounts of the Treasury will comprise the whole of the receipt and expenditure of the Colony.

The District Collections being he'd subject to the Treasurer's Drafts, without which no disbursement of them is to be made, the Commissioners' Accounts (although they hold temporary balances, of which distinct returns will be furnished by the auditor) will eventually become entirely incorporated with those of the Treasurer; and all confusion which might arise from payments for the public service being made by different persons, and from a multiplicity of distinct accounts, is prevented, it being nevertheless at all times open to hold any Commissioner responsible as a public accountant, should any necessity for so doing arise.

The suggestions of the Commissioners relative to the

Lombard and Discount Banks, to the establishment of a new Banking Company in which the Government should hold shares, to the issue of debentures, the redemption of the Paper Currency, if adopted to their full extent, would render some of the present instructions unnecessary, and require that others should be considerably modified. But as we presume that specific orders upon these subjects will be transmitted to the Colony, we have thought it best to leave the regulations applicable to the existing departments, and to the measures which the Local Government has already been authorised to adopt, until your Lordships and the Secretary of State shall issue further and definitive directions. With regard, however, to one of the regulations of this description, that for the deposit of the Treasurer's surplus balance, it may be right to observe that we have reduced the amount of the quarterly balance to be left in his hands, as a considerable portion of the salaries and other expenditure will be defrayed by drafts upon the District Chests; our information, however, as to the probable comparative amount of the receipts and payments at the seat of Government, and at the outstations, is of so very vague a nature, that the instructions on this subject may very possibly hereafter require further alteration. The establishment of a bank, to which your Lordships might think it right to entrust the custody of the Public Money, would obviously render the whole of the present regulations on this head nugatory.

As the Commissioners of Enquiry propose that Commission should be allowed to a Collector in Cape Town, we have inserted the Instruction to the Governor (No. 47) containing regulations respecting that allowance, similar to those generally in force in the other colonies.

In providing for the requisite communications between your Lordships and the local Government being made through the Secretary of State's Department, we have conformed to the principle adopted under your directions in the amended instructions for the Governor of New South Wales, submitted to you in our Report of 27th April 1826.

As it is stated by Mr. Hay to be Lord Goderich's wish that the intended alterations in the administration of the Public Departments at the Cape of Good Hope should take effect

from 1st January next, we have inserted in the first clause a specific direction for closing all the present accounts at the end of the current year.

The Instructions to the agent in this Country have not appeared to require any alteration. We have &c.

(Signed) EDMUND BYNG,
JOHN CONROY.

The Lords Commissioners of His Majesty's Treasury.

[Office Copy.]

Letter from the RIGHT HON. WILLIAM HUSKISSON *to*
MAJOR-GENERAL BOURKE.

DOWNING STREET, LONDON, 7th September 1827.

SIR,—I transmit to you enclosed a copy of a letter which has been addressed to my Under Secretary of State by Lord Charles Somerset, in which he requests that every facility may be given to Mr. Brink, for the purpose of enabling him, on his return to the Cape of Good Hope, to adjust certain Accounts of Surcharges which have been made upon his Lordship by the Commissioners of Colonial Audit, and I have to desire that you will afford Mr. Brink every assistance in your power, in conformity with his Lordship's request. I am &c.

(Signed) W. HUSKISSON.

[Office Copy.]

Letter from the RIGHT HON. WILLIAM HUSKISSON *to*
MAJOR-GENERAL BOURKE.

DOWNING STREET, LONDON, 8th September 1827.

SIR,—I transmit to you enclosed the Instructions which the Lords Commissioners of His Majesty's Treasury have prepared

for the guidance of the Governor or Officer administering the Government of the Cape of Good Hope, and of the Auditor and Treasurer of the Colony, in regard to the mode of accounting for the Revenue and Expenditure of the Colony, and to the system to be observed in preparing the financial Accounts, and I have to desire that you will strictly regulate your proceedings by the Instructions of the Lords Commissioners of the Treasury, and take care that the respective Officers whom they concern shall also conform themselves to their Lordships' directions.

These Instructions are accompanied by a Report from the Commissioners of Colonial Audit, which explains the principles upon which the Instructions have been drawn up.

I have &c.

(Signed) W. HUSKISSON.

[Original.]

Letter from. MESSRS. COLEBROOKE and BLAIR to
R. W. HAY, ESQRE.

MAURITIUS, 11 September 1827.

SIR,—Mr. Bigge having communicated to us your letter of the 20th January last, in answer to a communication he had made to you of the objections he entertained to the appointment of the Chief Secretary as a member of Council at the Cape, and it appearing to us that the principle upon which we concurred in recommending his admission may require some further explanation than is contained in our Report upon the administration of the Government, we are induced to trouble you with the following observations upon the subject.

The influence which has been exercised by the Chief Secretary was undoubtedly considerable, and had led to the inconvenience we had formerly noticed, but it appeared to us that, as in the formation of a Council to assist the Governor it was desirable to select the members from a class

of functionaries who possessed the greatest experience and who were least under the influence of the Governor, it would be inexpedient to narrow the selection by excluding the Chief Secretary from the number of those who should be declared eligible. The appointment of the heads of Public Departments being reserved to His Majesty's Government, a security would be afforded for the independent exercise of their functions as Counsellors, and considering the Governor as directly responsible for the execution of the powers entrusted to him, it appeared to us that by placing the Department of the Chief Secretary on its appropriate footing in common with others, the influence of the Secretary in Council would in future depend upon his personal qualifications rather than the nature of his office. But in recommending that the Secretary should be admissible, it was not in our contemplation to propose that his office should entitle him to a seat independently of the principle of selection applied to the other heads of Departments, nor that he should take precedence of older members than himself, as such a privilege might favour the belief that the office of the Chief Secretary was placed upon a higher and more independent footing than the executive Departments which are conducted under precise instructions, while the former is necessarily subject to the exclusive control and authority of the Governor.

We have &c.

(Signed) W. M. G. COLEBROOKE,
W. BLAIR.

[Office Copy.]

*Letter from R. W. HORTON, ESQRE., to
T. P. COURTENAY, ESQRE.*

DOWNING STREET, 12 September 1827.

SIR,—I am directed by Mr. Secretary Huskisson to transmit to you herewith enclosed, for your information and guidance, the Instructions which the Lords Commissioners of His

Majesty's Treasury have prepared and issued to you for your instruction in the regulation of your Expenditure and Accounts as Agent for the Colony of the Cape of Good Hope.

I am &c.

(Signed) R. W. HORTON.

[Original.]

Letter from MAJOR W. M. G. COLEBROOKE *to*
R. W. HAY, ESQRE.

PORT LOUIS, *September 12th* 1827.

DEAR SIR,—Since the arrival of Mr. Bigge I have had an opportunity of perusing the report he made after our departure from the Cape relative to the Establishment of the Orphan Chamber, and in which he recommended a suspension of the measure we had proposed for the execution of public works in the Colony from advances of funds on security of the private fund of the Chamber. I concur in the general view that Mr. Bigge has taken of the nature of the Establishment and of the principles on which it has been conducted, and I am fully sensible of the great success with which he has analysed the very diffuse treatise which was drawn up for our information by the Board. Nevertheless there are some points on which I have been anxious to offer some further observations relative to the application of our original views for the disposal of the fund, and which as they are of some importance I regret that I have been hitherto prevented by the intervention of other business from stating officially. I propose however to do so at an early period, as another opportunity for the transmission of letters may be expected very shortly to occur. I beg to remain &c.

(Signed) WM. M. G. COLEBROOKE.

[Original.]

Letter from the REV. C. H. MINCHIN *to*
R. WILMOT HORTON, ESQRE.

LONGFORD, *September 14th 1827.*

SIR,—Many of my parishioners are anxious to emigrate to the Cape of Good Hope, having friends and relations there, who, a few years ago, went out with Mr. Parker and Rev. Mr. McClelland. Permit me to ask, does the Government hold out any encouragement to emigration; and if so, what steps are necessary to be taken as a preliminary arrangement. Your answer will much oblige, Your &c.

C. H. MINCHIN,
Curate of Temple Michall.

[Office Copy.]

Letter from the RIGHT HON. WILLIAM HUSKISSON *to*
MAJOR-GENERAL BOURKE.

DOWNING STREET, LONDON, *16th September 1827.*

SIR,—I transmit to you enclosed a copy of a note from Count Mandelsloh, the Charge d'Affaires of Wurtemberg at this Court, requesting that measures may be taken for ascertaining whether an Individual named Michael Stohrer be still living at Cape Town, and if he be dead, whether he have left any property or heirs, and I have to desire that you will transmit to me such information as may enable me to answer the enquiries of Count Mandelsloh upon the subject.

I am &c.

(Signed) W. HUSKISSON.

[Office Copy.]

*Letter from R. WILMOT HORTON, ESQRE., to the
REVEREND C. H. MINCHIN.*

DOWNING STREET, 19 *September* 1827.

Mr. Wilmot Horton has the honor to acknowledge the receipt of Mr. Minchin's letter of the 14th instant and to acquaint him in reply that His Majesty's Government do not now grant any assistance or encouragement to persons who are desirous of emigrating to the Cape of Good Hope.

[Original.]

*Letter from JOHN THOMAS BIGGE, ESQRE., to
R. W. HAY, ESQRE.*

MAURITIUS, 21st *September* 1827.

DEAR SIR,—I had the honor to receive on the 18th instant your letter of the 29th May, in which by desire of Lord Goderich you have made me acquainted with a report which had reached England that the number of signatures attached to a Petition presented to Parliament by certain Inhabitants of the Cape had been attributable to a notion which was current in the Colony that it was approved by the Commissioners of Inquiry.

I beg that you will do me the favor of expressing to Lord Goderich my grateful acknowledgments for this proof of his Lordship's candour, and for the opportunity he has thus afforded me of repelling an interpretation which was calculated to injure both my colleagues and myself in his estimation, and to induce a belief that we had greatly outstepped the limits of the duty and discretion which were entrusted to us. I mention their names collectively, altho' I am aware that the report could only affect me individually, as my colleagues had left the Cape for this place in the month of September, and previous to the circulation of the Petition which is alleged to have received our approbation. I can venture however to

assure Lord Goderich both on behalf of myself and colleagues that no expression of our opinions upon the particular subjects detailed in the Petition had ever been made by us, that we had no communications whatever respecting them with the Individuals who took a leading part in obtaining support to the petition, and that altho' our report on the administration of the government in which some of the subjects of the Petition were mentioned had been despatched on the 26th October 1826, yet nothing had transpired, at least with our knowledge, that could entitle any individual, much less the supposed author of the paragraph to which I am about to call your attention, to form a conjecture of the nature of the opinions which we had submitted to the consideration of His Majesty's Government, or of the period at which they were transmitted. If I may be allowed to offer a conjecture of the motives which led to the address that is now in the hands of Lord Goderich, I shou'd feel disposed to impute it to the publication of our instructions by the authority of Parliament, and especially of that article in which our attention is drawn to the means of assimilating the judicial system of the Colonies to that which prevails in England, and also to the circumstance of some recent appointments having been made in England, the salaries of which seemed to have been calculated upon the supposition of a disposable surplus of the Colonial Revenues, and in anticipation of arrangements which were at that moment under our consideration.

I now have the honor to request that you will take the trouble of submitting to the perusal of Lord Goderich the enclosed extract from a newspaper published in Cape Town on Tuesday the 5th December 1826, and which was supposed, though erroneously, to possess the support and to express the sentiments of the Colonial Government from the circumstance of the leading articles being supplied by a few of the civil servants, some of whom positively denied while others indiscreetly afforded evidence of the contributions which they made. Upon my calling the attention of the Lieutenant Governor, Major General Bourke, to the enclosed paragraph, I received from him a positive disclaimer of any Government support to the paper generally, or any authority for the insertion of the paragraph of which I felt that my colleagues and myself had

reason to complain, on account of the unauthorised use that it made of our public commission for the purpose of deterring any portion of His Majesty's subjects from the exercise of their right of petitioning His Majesty's Government or the British Parliament, more especially in referring to that passage in which the writer expresses his astonishment "that any men possessing the least pretensions not only to respectability of character but of common sense and common prudence should venture to sign an address to Parliament in conjunction with the Commissioners' Report."

As I found that this passage had given rise to rumours which in such a Colony as the Cape speedily find credence when supposed to express the sentiments of the Government, altho' I am far from imputing them to the respected individual who then held the reins, I gave permission to a gentleman (who informed me that the appearance of this paragraph had excited a belief that the Commissioners would consider the signing the petition as an interference with their duties) simply to say that he was authorised by me to contradict that assertion.

As the petition had for some time been open for signature, and had received 240 names, and as the Lieutenant Governor had disavowed all authority for the paragraph, and the person who was the real editor of the *South African Chronicle*, in which it appeared, did not exercise such a degree of control over the contributions as to render him responsible, I did not think that the observations in the leading article of the 5th December called for any more formal contradiction, and I was glad to find by the tenor of a paragraph in the *South African Commercial Advertiser* of the 9th December that the sense of my communication had been fairly represented.

For our opinions upon the subject urged in the petition I would beg leave respectfully to refer Lord Goderich to those parts of our general reports in which those subjects either have been or may hereafter be mentioned, and most of which I believe were drawn up long antecedently to the discussion of the same subjects in any of the public journals. I have &c.

(Signed) JOHN THOMAS BIGGE.

[Original.]

Letter from the REVEREND JAMES EDGAR *to the*
RIGHT HONOURABLE WILLIAM HUSKISSON.

UTRECHT, 22nd September 1827.

SIR,—I was sent to this country by the British Government to acquire the Dutch Language with the view of being appointed to one of the Churches in the Colony of the Cape of Good Hope. My progress in the study of the language has been satisfactory to my teachers, and my certificates will be presented when my course is finished, which will be in about a month hence. The object of this letter is to request an allowance to be made to defray the expense of the passage to the Cape of a lady whom I intend to take out with me as my wife. I am encouraged to ask this from my knowledge of cases analogous to mine, and from the lady being a fit person by birth and education for me to take with me, being a British subject who has been a considerable time in Holland. Allow me also to add that she is sincerely desirous to promote the welfare of the people to whom Government intends to send me, as far as it shall be in her power, or shall be proper for her to do so. As this request appears reasonable in me to make, so in my case it is needful. I may mention that the correspondence relative to my appointment was addressed to Mr. Hay, Under Secretary, and that in addition to my testimonials of character and qualifications I was recommended by the Earl of Elgin to that gentleman. Hoping that you will answer me with your earliest convenience, as my stay in this country is now to be short, I am Sir &c.

(Signed) JAMES EDGAR.

[Original.]

*Letter from SIR RICHARD PLASKET to R. W. HAY, ESQRE.*CAPE OF GOOD HOPE, *September 22nd 1827.*

MY DEAR SIR,—My letter of the 26th ultimo (duplicate of which goes by the present opportunity) will have informed you of the Lieutenant Governor's departure for the Frontier, in consequence of the approach of one of the Savage Tribes from the interior of Africa towards the Borders, and of their having already plundered those nations living more immediately on our line of Frontier.

I am happy to be able to add that these Savages have again returned to their own Country, our patrols not having been able to discover a single man of them. They have plundered about 300 head of cattle from the Tambookies and 180 from one of the Caffre Chiefs, and this damage is the only result of their invasion, excepting always the trouble and expense of assembling, moving, and disbanding the armed Burghers, and the march of the Troops. The Lieutenant Governor, however, on his arrival in Albany deemed it expedient to strengthen the military Force in that District, with the view of saving the services of the Burghers in case of future attacks, and the Commodore has at his request taken up to Algoa Bay 250 men of the 55th Regiment.

I think our military preparations in Albany in the first instance were rather premature, as far as relates to the calling out the Burghers. This arose from the exaggerated Reports which reached Colonel Somerset through the farmers who had been with Mr. Mackay, the Landdrost of Somerset, on his reconnoissance, and from others who had heard them from those farmers; and I think Mr. Mackay was much to blame in not having officially acquainted the Commandant of the Frontier, both of his proposed reconnoissance, and of the result thereof. Colonel Somerset complains much of this, and with reason. The General intends to send up the remainder of the 55th Regiment, and has tendered for freights. The Lieutenant Governor has made a tour of the whole Frontier line of the Eastern District, and is at present, I believe, at

Graaff Reinet. We expect him back about the 5th of October.

I have received all your despatches up to No. 16, and have sent copies to the Lieutenant Governor, and I have no doubt he will hurry back to Cape Town. We shall have a very delicate as well as difficult task in arranging the new establishment.

I rejoice at Lord Goderich having placed the Chief Justice in Council in preference to the Attorney General. I cannot conceive a worse arrangement than having the Public Prosecutor, and also a private practitioner at the Bar, in Council.

As the Commissioners recommended the Chief Secretary to be cut down to £1,500, they were, I think, right in putting him out of the Council; but hitherto the Chief Secretary has been the most independent Member of Council, for the Governor could not possibly do anything for him, and I know that the Chief Secretary has been, with one exception, the only person who has resisted the Governor in Council. It was only the other day that the Lieutenant Governor in his executive capacity acted in a way I thought in opposition to the Resolutions of Council. He did not agree with me when I stated so to him, but I brought the question before Council and carried it against the Lieutenant Governor, and as it was settled amicably no record in Council was made on the subject, but his Executive Act was rescinded.

I think you are right in putting into Council two Resident Proprietors. It will please the Colonists, but as to any other good effect, or as to their being more independent than the higher Officers of Government, *time will shew*.

The Commissioners, in appropriating the Orphan Funds, ought to have pledged Government as responsible for any claims that may hereafter arise on such property, and should have proposed to deposit the money in the Treasury, instead of expending it expressly in a new Government House, Museum, etc. We might have done that, if necessary, afterwards. This and the diversion of the Church Funds, which are partly derived from private Donations and Bequests to special Churches, have created a strong sensation here. The mouths of the Clergy will be silenced by the encrease of pay

the Commissioners have given them, but the people will not be pleased.

I fear also that the measure proposed by the Commissioners for abolishing the Vendue Master and licensing Auctioneers will cut off that very lucrative branch of Revenue. As soon as the responsibility of Government for the proceeds of the sales is withdrawn, the merchants will cease to sell their investments by auction, and I have good reason to know that all the principal merchants have stated their determination in this respect.

As to the Representative Assembly, the Commissioners ought to have clothed the recommendation in a Confidential Despatch. The Colonists are now loud in their abuse of General Bourke for his opinion, which Mr. Morton read in the House. The General, however, was quite right, and I cannot understand how the Commissioners, after the character they themselves give of the Colonists in the same report, could assert that they were fit for such an Institution.

I cannot but approve of Mr. D'Escury's removal. His breach of confidence fully merited it.

I have forwarded Lord Goderich's Despatch about myself to the Lieutenant Governor, and on his return he will reply officially to it. Colonel Bell writes to me that he is well pleased at having a little time left him to prepare for his new duties. I have &c.

(Signed) RICHARD PLASKET,
Secretary to Government.

[Original.]

Letter from MR. JAMES THOMAS ERITH to R. W. HAY, ESQRE.

NO. 17 HIGH STREET, LAMBETH, *September 22nd 1827.*

SIR,—Not wishing to trouble His Lordship the Right Honorable Viscount Goderich at the present moment, I take the liberty to solicit you will have the goodness to name to His Lordship how anxious I feel for His Lordship's reply to my communications of the 26th of July and 1st instant.

I have &c.

(Signed) JAMES THOMAS ERITH.

[Copy.]

*Letter from B. BALFOUR, ESQRE., to MRS. JANE ERITH.*DOWNING STREET, *September 22nd 1827.*

MADAM,—As Lord Goderich no longer holds the Seals of the Colonial Department, he cannot interfere in your case.

I have &c.

(Signed) B. BALFOUR.

P.S.—I therefore beg leave to return you your papers.

[Original.]

*Letter from CAPTAIN ALEXANDER JONES, R.N., to
R. W. HAY, ESQRE.*HOWDEN NEAR TIVERTON, *September 23rd 1827.*

SIR,—Allow me to say that I am much obliged by your having laid before Viscount Goderich the rough copy of my letter to Lord Melville respecting a Pier or Breakwater at the Cape of Good Hope. Your communication of his Lordship's gratifying answer induces me to ask whether I shall now send you my plan. I am &c.

(Signed) ALEXANDER JONES.

[Office Copy.]

*Letter from R. W. HORTON, ESQRE., to WILLIAM HILL, ESQRE.*DOWNING STREET, *24 September 1827.*

SIR,—With reference to the letter which Mr. Hay addressed to Mr. Harrison under date of the 10th of November 1825, in which it was stated that the Governor of the Cape of Good Hope had contracted from the Agent of the East India Company in that Colony a loan to the amount of £18,000 for the service of the Colonial Government, I am directed by Mr. Secretary Huskisson to transmit to you enclosed a copy

of a dispatch which has been received from Major General Bourke covering an application which he had received from the Company's Agent demanding the reimbursement of the said Loan, and in laying these papers before the Lords Commissioners of His Majesty's Treasury, I am to request that you will acquaint their Lordships that Mr. Huskisson has recently received a similar application herewith enclosed from the Chairman of the East India Company and that Mr. Huskisson will, therefore, be glad to know their Lordships' opinion as to the answer which it may be proper to return to this Application. I am &c.

(Signed) R. W. HORTON.

[Original.]

*Letter from MESSRS. COLEBROOKE and BLAIR to
VISCOUNT GODERICH.*

MAURITIUS, 24th September 1827.

MY LORD,—Mr. Bigge having already in his letter to Mr. Hay of the 14th of February last explained the circumstances which prevented the completion of the 3rd section of our Report on the laws and Courts of Justice at the Cape of Good Hope previous to our departure, and the cause of the non-appearance of our signatures to that portion of our Report which contained an account of the establishment of the Orphan Chamber, and as we have carefully perused the draft of the Report since Mr. Bigge's arrival here, it only remains for us to express to your Lordship our entire concurrence in the views he has taken of the past administration of the Chamber, and of the principles upon which it should in future be conducted.

We are indeed very sensible that the analysis which Mr. Bigge has so ably afforded of the diffuse Treatise which he forwarded, was required to enable your Lordship to form a mature judgment regarding some of the measures which we had previously recommended, and as he had occasion to notice some additional charges which were not before us at the period when we were engaged in framing our Report upon

the finances of the Colony, we should greatly have regretted if any general arrangements had taken effect without provision being made for claims arising out of grants conferred by the Board with the sanction of the Colonial Government.

In a separate communication we propose to trouble your Lordship with some further observations relative to the Plans submitted by us in our Report on the Finances of the Colony for the appropriation of the private Funds of the Chamber.

We have &c.

(Signed) W. M. G. COLEBROOKE,
W. BLAIR.

[Original.]

Letter from SIR RICHARD PLASKET to R. W. HAY, ESQRE.

COLONIAL OFFICE, CAPE OF GOOD HOPE, 24th September 1827.

SIR,—In the absence of the Lieutenant Governor I have been desired to acknowledge the receipt of Viscount Goderich's despatch No. 5 of the 5th May last, and I have the honor to transmit for His Lordship's information the copy of a report with its enclosures from the Orphan Board in this Colony by which it appears that the delay complained of to His Lordship by Mr. Charles Campbell is attributable to the residence of that gentleman in England having been unknown to the Orphan Chamber, by which means the letter enclosing to him the remittance of his share in the property of his late father was simply addressed "Charles Campbell, Esqre., London." I now beg to enclose a copy of that letter with the duplicate of the bill by which the remittance was made.

I have &c.

(Signed) RICHARD PLASKET.

[Enclosure in the above.]

ORPHAN CHAMBER, 19th September 1827.

SIR,—We have the honor to acknowledge the receipt of your letter of the 12th instant on the subject of the difficulty experienced by Mr. Charles Campbell in arriving at the possession of his share in the property of his late father Major General Campbell administered by this Board, and in reply to state that no delay has arisen on the part of the Board in the liquidation of General Campbell's estate. The estate has been closed on the 12th November 1823.

The amount of Mr. Campbell's share has already been remitted to England, and to convince His Honor the Lieutenant Governor that no neglect is imputable to the Board on this account, we do ourselves the honor of transmitting a copy of the letter addressed to Mr. Campbell, accompanied by the triplicate of the bill remitted on the 15th February last.

We are however disposed to believe that the delay of which Mr. Campbell complained may have arisen in consequence of the subscription of the letter not having been sufficiently detailed, owing to the Board being unacquainted at the time of Mr. Campbell's place of residence. We have &c.

The Board of Orphan Masters,

(Signed) J. A. TRUTER.

By order of the same,

(Signed) J. J. L. SMUTS.

The Secretary to Government.

[Original.]

Letter from MR. D. M. PERCEVAL to R. W. HAY, ESQRE.

CAPE TOWN, September 24th 1827.

MY DEAR SIR,—I received your letter of June last, which gave me great pleasure, by the *Mary*; and I hope you will do me the favour to express my very best acknowledgement

to Lord Goderich for his kind consideration of me in the new arrangements for this Government. I feel particularly indebted to his Lordship, that he has found any means of encreasing the value of my situation here, at a time when, I am aware, a very general reduction in the establishment of this Colony has been thought necessary: and if I were still in the same condition as when I last had the honour of addressing you, I would not think of saying more. But, as you probably know, I have since become a married man. I hope that neither you nor Lord Goderich will think me very forward, if, in that capacity, I request of your kindness to represent to his Lordship that although just now the Colonial Revenues are rather declining, yet as many of the causes which have affected them may fairly be presumed to be temporary, there is a prospect of their early recovery, in which case might I venture to hope that I may be replaced in the receipt of some portion of my old salary as Clerk of the Council, which I understand is to be merged in the amount of that which the Commissioners of Inquiry have, I see, proposed for the Auditor General alone, viz., £1,000 per annum, which I am informed by Sir Richard Plasket is to be for the future my pay for both situations. I am aware that my present salary (£800 per annum) as Clerk of the Council may be looked upon as too ample for that office only with reference to the other new establishments; but if a part of it were hereafter to be restored, the arrangement would be far more desirable, and I am willing to hope it could meet with no objections, as the Commissioners have recommended the full sum of £1,000 as the pay for the Auditor. In making these suggestions, I trust that I shall not seem either craving or impatient, but as I believe that I have no other very near prospect of advancement in this Colony I have taken the liberty to point out a mode in which my situation might eventually be improved, without difficulty, or the appearance of undue partiality. In the meantime I hope by the punctual discharge of my own duties to merit both your own approbation and that of Lord Goderich, and I remain &c.

(Signed) D. M. PERCEVAL.

[Original.]

*Letter from MR. JAMES THOMAS ERITH to the
RIGHT HONOURABLE W. HUSKISSON.*

No. 17 HIGH STREET, LAMBETH, *September 24th 1827.*

SIR,—The recent changes in His Majesty's Government compels me to trouble you with the enclosed duplicates. I have taken the liberty to insert the communication of Saturday last and also enclosed the drawings and chart for your inspection, and I respectfully solicit they may not be considered official documents, but when Sir you will be pleased to signify you have done with them I will call for them.

I shall only Sir further trespass on your time by naming how impossible I feel it is to provide for my family by my exertions in my present afflicted state, the foundation of which was laid in Africa while compelled to reside on the Frontiers, and which has ended in a rheumatic contraction of my left hand &c. I therefore humbly solicit you Sir will take my case into your serious consideration, and allow me to repeat I have no vindictive feelings against either the author or abettors of all the serious injuries I complain of. I only pray for just and equitable restitution, and am &c.

(Signed) JAMES THOMAS ERITH.

[Original.]

Letter from MR. CHARLES D'ESCURY to LORD GODERICH.

CAPE TOWN, CAPE OF GOOD HOPE, *24th September 1827.*

MY LORD,—The Lieutenant Governor Major-General Bourke has just caused to be communicated to me Your Lordship's commands whereby I am removed from my situation in the Public Service of this Colony for having made official communications to private Individuals in England. I admit that I have done so, My Lord, but may I be permitted to ask to whom were those Communications made? to two Individuals who had stood in the Highest Public relations in this Colony,

both had been Governors. And for what purpose were those communications made? for the *express* and *exclusive* purpose of affording the Secretary of State information thereon; and I acquainted the then Secretary of State Earl Bathurst therewith. And when did this take place? So long ago as March 1823, now more than Four Years past, since which I have had different communications both with Earl Bathurst and with the Under Secretary of State, all of a satisfactory nature, and without ever the subject so fully known in the Secretary of State's office having been adverted to. And now, My Lord, because one of those Individuals has, totally *unauthorised* by me, had the indiscretion to publish part of those communications, that indiscretion is visited on me in a manner that involves my Family and myself in utter ruin! I have no other means of support; during fourteen years I have laboured zealously and assiduously, under every possible disadvantage, at the head of a difficult and important office, my Salary by the depreciation of the currency diminishing in value as my labours increased; my exertions however have been constantly approved, nay lauded, and the testimonials thereof are in Your Lordship's office; and now, at the very moment when by the new arrangements that are about to be carried into effect I had the prospect before me of being put in receipt of an adequate remuneration, whereby I should have been enabled to retrieve some of the losses I have sustained, and to afford some advantage and other comforts to myself and my rising family, for a fault not my own the prospect thus placed before me is dashed, and I am plunged into the utmost distress! The late communications I have made to another Individual, a Member of Parliament, were made in my own defence, on a subject of public notoriety, when I was arraigned on a charge on which I had to defend myself, and when I was threatened on all sides, and that every effort was made to bear me down. This latter therefore Your Lordship's sense of justice will, I feel convinced, not allow to militate against me. And as to the former I beg to throw myself on Your Lordship's indulgence, and respectfully to solicit that, for the reasons here stated, which are still more fully shown in the two letters addressed by me to His Majesty's Commissioners of Enquiry on the 14th and 19th of April last, that your Lordship may be pleased

to reconsider the order for my removal, and to save me from the fatal consequences thereof.

With the greatest respect I have &c.

(Signed) CHAS. D'ESCURY.

P.S.—I beg still to state to your Lordship that on the very instant Sir Rufane Donkin's pamphlet came into my hands I wrote to him, bitterly complaining of so unauthorised a breach of confidence.—C. D.

[Original.]

Letter from MR. W. BEDDY to VISCOUNT GODERICH.

CAPE TOWN, CAPE OF GOOD HOPE,
24th of September 1827.

MY LORD,—I have the honor to enclose for your Lordship's inspection a testimonial from Sir John Truter, the present Chief Justice, certifying my knowledge of the Laws of this Colony and of the Dutch language.

Relying on these qualifications, and an education attested by the Degree of Bachelor of Arts obtained in the University of Dublin, I beg to offer my services to your Lordship and His Majesty's Government. I have &c.

(Signed) W. BEDDY.

[Original.]

Letter from MR. W. BEDDY to LORD CHARLES SOMERSET.

CAPE TOWN, CAPE OF GOOD HOPE,
24th of September 1827.

MAY IT PLEASE YOUR EXCELLENCY,—Perceiving by the Commissioners' report that several appointments from home are likely to take place, I have addressed Lord Goderich on

the subject, enclosing a testimonial, in which Sir John Truter the Chief Justice does me the honor to certify my attainments in the Laws of this Colony, and the Dutch language.

Those marks of kindness with which I was honored by your Excellency when here, and for which I am proud to acknowledge my obligations, embolden me to transmit my letter to Lord Goderich through your Excellency's hands, and to hope that your Excellency will do me the honor to accompany it with some expression of favor. I have &c.

(Signed) W. BEDDY.

[Office Copy.]

*Letter from R. WILMOT HORTON, ESQRE., to the
HON. ALEXANDER JONES, R.N.*

DOWNING STREET, 25 *September* 1827.

SIR,—Having in the absence of Mr. Hay opened the letter which you have addressed to him under date of the 23rd instant, I have the honor to acquaint you in reply that although I am not aware that it has been finally determined to take measures for forming a Breakwater at the Cape, yet if you should think proper to transmit your plans for such a Work to this Department, I shall readily lay them before Mr. Secretary Huskisson for his consideration. I have &c.

(Signed) R. W. HORTON.

[Original.]

Letter from MAJOR-GENERAL BOURKE to R. W. HAY, ESQRE.

UITENHAGE, *September 26th* 1827.

MY DEAR SIR,—I have to acknowledge the receipt of your letters of the 23rd May and 14th and 16th of June marked private. They reached me on the frontier, whither I thought

it expedient to repair in consequence of the movements of some of the Tribes in the interior of Africa threatening to disturb the peace of our border. It appeared that a people called Massatous invaded the Country of our neighbours the Tambookies, and that the latter apprehensive of the numbers and power of the enemy moved across our boundary into the District of Somerset in force three or four thousand men, as was reported, and bringing with them from ten to twelve thousand head of cattle. An irruption of this kind was likely to prove very inconvenient to the Farmers of Somerset, who have usually but an indifferent supply of food for their own stock, yet as the Tambookies came for refuge into the Colony, are an honest inoffensive race and our very best neighbours, it would have been impossible to have forced them back on the swords of their enemies. The Council were therefore of opinion that the Tambookies should be maintained, and if necessary by our assistance, in the possession of their Country, this being the most exposed part of our border, on which it would have been highly dangerous to have permitted a powerful and warlike tribe to place themselves. I proceeded expeditiously to the Frontier, but found on my arrival that the Massatous, after plundering the Tambookies of some cattle, and menacing the western parts of Caffreland, had retired towards the Orange River. I have persuaded the Tambookies to return to their Country, have encouraged the Caffres to resist the invaders, have visited the whole frontier line, established a few necessary posts, and given such orders as will I hope secure our borders from molestation. Upon this subject I shall have the honor to address Lord Goderich immediately on my return to Cape Town, to which place I am now tending.

I have taken this opportunity of inspecting all the military works and buildings on the frontier, and hope now to be enabled to come to an understanding with the Ordnance Department, and put an end to the confusion which has so long prevailed, but which I hope you have done me the favor to shew to Lord Goderich did not commence with my administration of this Government, but that on the contrary I have in two several despatches represented the inconvenience and requested permission to supply the remedy.

Since I have been absent from Cape Town I have received Lord Goderich's despatches from No. 2 to 16 inclusive, which shall be replied to on my return. Being thus made aware of the changes which His Majesty's Government propose to make in the Civil Establishment and finance of the Colony, I shall avail myself of the opportunities which the remainder of my journey may afford of acquiring at the several Drostdies such information connected with the proposed changes as may facilitate their introduction. I have already done something in this way, and being accompanied by Colonel Bell (whom I brought with me from Cape Town in his military capacity of Quartermaster General) I have begun to prepare him for the discharge of the civil duties which he will shortly be called upon to perform. Sir Richard Plasket proposes to leave the Cape in about two months.

I cannot at the moment venture to reply to the queries contained in your letter of the 16th June, but am endeavouring to obtain information relative to them as I pass thro' the Country, and propose to write again shortly after I reach Cape Town, which I hope to do on or about the 10th of next month. My chief object in writing now being to prevent any surprize that might be occasioned by the suspension of my official correspondence occasioned by my absence from Cape Town, and lest the motive of my journey to the Frontier should reach Downing Street with all those exaggerations which idle and curious people are accustomed to bestow as embellishment to public news.

The changes about to be introduced, more especially in the finance of the Colony, are comprehensive and important, and will as I imagine impose considerable burthens on the Country Districts. I cannot flatter myself that they will altogether be well received, but it shall be my endeavour to smooth the difficulties which under any circumstances are inseparable from a measure involving such material changes as that now under contemplation. I am &c.

(Signed) RICHD. BOURKE.

[Original.]

Letter from the COMMISSIONERS OF ENQUIRY *to*
VISCOUNT GODERICH.

MAURITIUS, 26th September 1827.

MY LORD,—Your Lordship has already been informed that after the departure of two of us from the Cape some explanations were afforded by the Board of Orphan Masters, from which it appeared that a charge amounting to £135 per annum had been imposed upon what has been called the “Private Fund” of the Chamber to defray certain Pensions and Gratuities which are enumerated in the Margin (Widows’ Fund £45, Scholars’ Fund £22 10s., Bible and School Commission £37 10s., Orphan House £30); that a sum of £300 per annum would be required to defray the contingent expences of that Department, and that the deficiency in the fees collected to defray the salaries of the proposed Establishment would constitute a further charge of £418, which had not been provided for in the Estimates which accompanied our Financial Reports.

On a full consideration of the arrangements proposed in our Judicial and Financial Reports for realizing and appropriating the funds of the Orphan Chamber, we have judged it proper to trouble your Lordship with the following additional observations:—

The interest accruing upon the sum of £3,000, which it has been subsequently proposed to apply to the uses of the Orphan House, will be a means of sustaining that useful charity. The building, tho’ susceptible of improvement, is a very good one, and capable of affording accommodation for a number of children if adequate funds should be applied to their instruction and maintenance, and this measure will not preclude the future application of the principal, or a part of it, if required for the improvement of the Institution. The Income derived from £3,000 at 6 per cent will be £180 per annum, which will supersede the present annuity of £30.

In the same manner the interest of the sum of £750 set apart from the private fund for ten years (commencing in

1826) will defray the pensions amounting to £45 per annum, granted for that term to the widows of the clergy of the Reformed Church.

The grants to the "Scholars' Fund" and to the School Commission, amounting together to £60 per annum, may also be defrayed from the interest on a sum of £1,000 set apart from the private Fund, and it may be a subject for consideration at a future period, as in the case of the Orphan House Fund, whether the principal sum may be justly and advantageously applied to the improvement of the schools of the Colony, in the benefits of which the persons would participate for whose uses it was intended. These three sums, amounting to £4,750, we should recommend when realized to be invested in Government Securities bearing Interest.

As the expences of the Establishment of the Orphan Chamber were intended to be defrayed from the fees collected, and as this arrangement had effect at an early period of the Institution, when no interest was allowed on the property of minors, it appears to us, on more mature consideration, that the Estates administered by the Chamber may be justly chargeable with the whole of those expences, either by increasing the administration fees of two and a half per cent, or by reducing the rate of interest allowed upon the property of minors. We should recommend that the amount of any collections under either arrangement should be paid over to the Colonial Treasury, from whence the salaries and contingent expences of the Chamber should be regularly defrayed.

By this arrangement the only deductions from the Private Fund not originally contemplated by us will be £1,750, to provide for annuities, of which £750 will be redeemable in 10 years, and the entire amount of these appropriations including £3,000 to the Orphan Chamber, will be £4,750. Deducting this amount from the capital of £27,383, which we before considered available, the sum still applicable to the other objects proposed by us to be accomplished by means of this fund will be £22,633.

In our Report upon the finances of the Colony, altho' we adverted to the difficulty of effecting recoveries, we did not sufficiently dwell on the great inconvenience which would be occasioned to the inhabitants, were any abrupt measures to be

adopted for redeeming the mortgages. That omission however has since been supplied in the Report upon the Orphan Chamber, and our former proposal in the Report upon the finances to erect a fund for Public Works by means of advances from England on the security taken from the loans on Colonial Mortgage, had in view the early accomplishment of the undertakings contemplated in that Report, and the *gradual* redemption of those mortgages to the extent of such advances. The Funds proposed to be thus redeemed were the separate or "private" capital of the Orphan Chamber, the funds of the Church, and various charitable Institutions. We are very sensible that great caution will be necessary in effecting those recoveries without pressing unduly upon the resources of the inhabitants, which have been so much impaired, and from the present scarcity of money, a ruinous sacrifice of property would be the consequence of an indiscriminate enforcement of engagements. It will at the same time occur to your Lordship that if such a mode of investing public funds has been deemed objectionable, the same inconvenience has resulted from investing the property of minors in such mortgages, on which account we recommended that it should be also gradually redeemed and invested in Government debentures bearing interest.

Although the real and personal securities which it has been customary to take for loans upon mortgage at the Cape are generally calculated to remove any doubt of the ultimate recovery being effected, we should still recommend that the property taken over as security for any advances from England should be revalued. The funds thus advanced we should hope would tend to relieve the difficulties of the Colonists by the employment given to industrious classes. The labour required in the erection of public buildings would hold out such employment to the slaves of the inhabitants, as well as to free labourers, and would increase the demand for the produce of the Colony.

These are the considerations which originally weighed with us in recommending the early execution of public works of acknowledged utility, and as the circumstances of the colonists are in no degree changed for the better since the date of our Report, we should still hope that no measures will be taken for

carrying our proposals into effect except by funds advanced to the Colony on the securities we have indicated.

We have &c.

(Signed) JOHN THOMAS BIGGE,
WILLIAM M. G. COLEBROOKE,
W. BLAIR.

[Original.]

Statement by MR. CHARLES D'ESCURY.

CAPE TOWN, CAPE OF GOOD HOPE, 26th September 1827.

Mr. D'Escury is a native of Holland. In 1795 he came to England with the late Prince of Orange. In 1799 he was naturalized by Act of Parliament, and always resided in England till 1813, when heavy pecuniary losses induced him to seek to be employed in any of the Colonies. He came here, having been strongly recommended to Lord Howden (then Sir John Cradock) by the late Lord Auckland, Sir J. Cox Hippisley, and others, sanctioned by a letter of Lord Liverpool to Sir John Cradock. He arrived soon after the promulgation of the measure for altering and fixing the nature of the Land Tenure throughout the Colony, and was in April 1814 appointed to the situation, corresponding with that of Surveyor General in other Colonies. The carrying into effect of that extensive measure rendered his office one of considerable labour and difficulty; during many years the Governor's approbation was frequently expressed both verbally and in writing, and even His Excellency's personal thanks for his exertions were conveyed to him. At a later period he had the misfortune to differ occasionally from His Excellency's opinion, and he soon perceived that he had thereby incurred His displeasure. These occasions became more frequent, till at last he felt that he would have to choose between his duty and his private interests. He chose the former, and gave offence. About this time Commissioners of Inquiry were appointed, and Mr. D'Escury prepared a series of official documents to lay

before them, with the expressly declared intention of grounding thereon a recommendation for a greater check on the granting of Land, and the establishing of better regulations for the future, not an enquiry into the past, and therefore he made no comments on any of those documents, they were however very strong in themselves, as indeed they ought to be to justify such a recommendation. The arrival of the Commissioners was likely to be considerably delayed by the intention of their first going to the Isle of France. Mr. D'Escury therefore sent those documents to the Secretary of State's office in March 1823, imagining that some intermediate regulation might be grounded thereon, and he informed the Secretary of State that he had communicated the subject to Lord Howden and Sir Rufane Donkin, for the purpose of affording him such information respecting it as from the High Stations they had filled here they were so eminently qualified to do, and he stated to those High characters his having so acquainted the Secretary of State, and in like manner he subsequently acquainted the Commissioners with the same, furnishing them with a copy of his letter to Mr. Wilmot Horton. This has been thus circumstantially stated, to show that Mr. D'Escury has made this communication to Lord Howden and Sir Rufane Donkin openly, with the knowledge of the Secretary of State and of the Commissioners of Inquiry, distinctly *for official purposes only*.

After the Commissioners were here, the Secretary of State having been pleased to put constructions upon the naked facts, such as Mr. D'Escury had never contemplated, the Commissioners were directed to institute a special enquiry thereon, and to call on Mr. D'Escury to substantiate those constructions. He protested against this in the strongest manner, and the Commissioners declared that they would abandon this ground, and consider Mr. D'Escury as a witness only, but they declared also at the same time that notwithstanding it rested with the Secretary of State to retain his original view of the subject, or not. Mr. D'Escury therefore remained responsible, while he could neither defend himself nor was he ever permitted to know what was said or done respecting it. It is not necessary here to detail these proceedings, but when they were closed Mr. D'Escury asked to

be informed whether any part of what he had stated had been controverted, in order that before the Report was made up he might have the opportunity of proving what he was actually responsible for. *This was refused*, and consequently he was placed in a state of the most anxious suspense, because of the aforesaid declaration, from which he was not relieved until about a twelvemonth after, when the Secretary of State honored him with a letter, dated 30 May 1825, wherein He was pleased still to maintain his original view of the subject, but added that as his (Mr. D'Escury's) official conduct and general deportment had been represented by the Commissioners to have been meritorious. He was not disposed to take any further notice of the share he (Mr. D'Escury) had in that transaction. Mr. D'Escury respectfully bowed to the Secretary of State's opinion, and expressed in his reply the satisfaction he experienced from the approval his general conduct had obtained, and thus he considered this matter closed; and a subsequent letter received by him from the Under Secretary of State, Mr. Hay, dated 10 July 1826, impressed him with the gratifying conviction that no further unfavorable feeling was entertained towards him by the Secretary of State, in all which he was the more confirmed by what Mr. W. Horton was reported to have said in the House of Commons on the 7th December 1826, in reference to certain papers relative to Mr. D'Escury being called for, that "He saw no reason why they ought to be produced unless it was intended to bring forward some specific charge on that case. Government were fully satisfied upon it, and did not intend doing anything."

In the interval however a part of the before closed subject has been reagitated by Lord Charles Somerset on the 12th October 1825, which the Secretary of State was induced to consider as if it had been a new and distinct case, and without Mr. D'Escury being informed of what Lord Charles Somerset had alleged on the subject, Lord Charles Somerset's assertions were received, and Mr. D'Escury was, by a Despatch dated the 25th March 1827, about 18 months later, suspended from his office during three months. On the 8th August 1827 Mr. D'Escury addressed Lord Goderich on the subject, to explain the nature of it, and to show the unmerited severity with which he had been visited. This letter could not have reached

His Lordship before another mandate was issued against him, more terrible in its consequences than the former, since it stamps disgrace on his character, and involves himself and family in utter ruin. By that mandate he has been entirely removed from his official situation, on the ground of his having communicated official subjects to Individuals in England. This can have reference only to those subjects which with the knowledge of the late Secretary of State for the Colonies and of the Commissioners he had four years and a half previous communicated to Lord Howden and Sir Rufane Donkin, without having been censured for doing so, and having two years after, that is in May 1825, had an acquittal from Earl Bathurst on the ground and admission thereof by His Lordship, of the Commissioners' declaration that "his (Mr. D'Escury's) official conduct and general deportment had been meritorious!" If then these communications, which had so long been known to have been made, had been of such a culpable nature as to call for Mr. D'Escury's removal from office, how could so strong a declaration of approval of his conduct have been made by the Commissioners? How could it have been admitted and acted upon by the then Secretary of State? And if not culpable then, how can the unauthorized publication of part of them by Sir Rufane Donkin, done without regard to the exclusive object for which these communications were made to him, have rendered them so? for thus Mr. D'Escury has been made the victim of an indiscretion in which he had neither directly nor indirectly the slightest participation.

The subject of the special enquiry before alluded to he has communicated to a Member of Parliament, Mr. Buxton, to do which he was compelled in his own defence, but that was done also for the exclusive purpose of defending him in England, should circumstances have rendered it necessary; moreover that was a subject of public notoriety, on which Mr. D'Escury has been, as it were, arraigned, and therefore there was no breach of trust in making use of the papers relating to it for his defence. And to no other person has Mr. D'Escury ever made any communication on official subjects.

Thus then after 14 years of zealous and assiduous discharge of the several duties of the laborious and important branch of

the public service entrusted to him, during the 4 last years of which he has been exposed to continual and frequent anxiety, subjected to threats, and undergone actual severities, while from the most conscientious conviction that however painful to himself (he has declared it to be so at the time) he was performing that which he owed to the public; and while the general administration of his office has been constantly approved, first by the different Governors, and lastly also by His Majesty's Commissioners themselves, he has for a fault not his own, at a moment when by the new arrangements about to be established, he had for the first time the prospect of an adequate remuneration held out to him, been disappointed of that prospect, and in disregard of his long and approved services he has been disgraced and ruined!

[Office Copy.]

Letter from the RIGHT HON. WILLIAM HUSKISSON *to*
MAJOR-GENERAL BOURKE.

DOWNING STREET, LONDON, 28th September 1827.

SIR,—Having had under my consideration the first report transmitted by you, from the Registrar and Guardian of Slaves, of the duties which this Officer has had to perform during the last six months of the preceding year, I am desirous of acquainting you with the view which I take of the principal cases which have come under the Guardian's cognizance.

The first case which occurs is that of a Slave named Patientie. It is one in which the Court seems to have shewn an extreme and unaccountable lenity. The charge was nothing less than that of attempting to kill his own Son, and then attempting to stab his owner and the Officer of justice who interposed to arrest him. But the capital part of the charge, it was said, was not proved, and partly on this account, and partly on account of the advanced age of the prisoner, he was sentenced to imprisonment for three months. How much was proved against this person does not appear, but if the evidence at all corresponded to the charge, it is difficult to understand how

such a criminal could escape the severest punishment which it was in the power of the Court to inflict.

In the case of Martinus and four other Negroes who were claimed as Slaves, by a Mrs. Herold, the Guardian of Slaves succeeded in effecting their liberation on the ground that they had many years before been manumitted by the will of a former proprietor. I notice this case with a view to the two following remarks. First, although these persons had been for many years unlawfully held in Slavery, no remuneration seems to have been claimed by the Guardian for their past services, nor does any proceeding seem to have been instituted against the parties who had illegally compelled them to live in a state of Slavery. Secondly, it appears that complaints had been made to the Courts of Justice many years before without any result, but that the Court came to a decision in favor of the Slaves the very next day after the interposition of the Guardian.

The case of a Slave named Thomas is precisely similar to that of the Antigua Slaves which is now pending before the High Court of Admiralty. Thomas accompanied his master to England in the year 1809, and if the arguments which have been brought forward in the Antigua cases be well founded, he is on that account entitled to his freedom in the Colony. The Guardian of Slaves at the Cape of Good Hope could not of course have been aware of this controversy.

The case of Pharoa suggests a question of very great and general importance. This Slave claimed to be entitled to freedom on the ground that his maternal grandmother was emancipated. Many witnesses were produced in support of this case, but hitherto Pharoa has failed to establish the fact of his Grandmother's emancipation to the satisfaction of the Guardian. He, therefore, remains in Slavery, although his mother is a free woman.

In this case, and in a great many subsequent cases, it is taken for granted that the legal presumption is in favor of Slavery and not of freedom, and that a black man claiming to be free must sustain the whole burthen of proof. The policy of this rule of law is manifestly questionable, because it tends to perpetuate the state of Slavery, and is not consistent with justice, because it throws the burthen of proof on the

weaker and more ignorant party, and requires him to prove the negative, viz. that neither he nor any of his maternal ancestors were ever lawfully reduced into slavery. Of such a fact it might in the nature of things be scarcely possible to adduce proper evidence. This principle is peculiarly dangerous in a continental Colony, within the limits of which the natives may be continually entering.

It is inconsistent with the Roman Law and with the English Law of Villenage. In the West Indies, indeed, it has been very generally recognized, rather indeed by usage than by positive Statutes. But, in the recent Slave Act of Tobago, the Law is placed upon a much better ground. That Act in effect provided that in all causes where the right of freedom is in question, it shall be the duty of the Master to prove his title to the Services of the asserted Slave.

The report of the case of Frederica seems to be defective. This woman also claimed the freedom of herself and her children on the ground of her being the daughter of a free woman. The evidence of various witnesses is transmitted, but nothing said respecting the result of the case.

In the case of Rosina it appears that the Orphan Chamber refused to deliver to the Guardian of Slaves the copy of a will upon which the freedom of this person was supposed to depend, unless the usual fees were paid. The same difficulty was made in the case of a Slave named Jamira. Now this is a subject to which I must call your serious attention, and although I am given to understand that the Constitution of the Orphan Chamber has recently been established upon principles the application of which will prevent the recurrence of such an abuse, yet I am desirous that you should if necessary adopt specific measures for the purpose of securing to the Guardian all proper facilities towards the due discharge of his functions.

In the Reports of the Assistant Guardians numerous cases occur of Slaves being punished from failing to prove the justice of their accusation, and upon this subject I would observe generally, that the punishment should not have been inflicted without some better proof than this that the complaint was malicious and frivolous.

I must also notice that in the reports of proceedings against

Slaves in the Country Districts the Assistant Guardian has in many cases omitted to state the result, but I cannot omit to state in conclusion that the report of the Guardian of Slaves seems very creditable to his diligence and zeal, and affords many striking illustrations of the benefits which the Law is calculated to produce. I am &c.

(Signed) W. HUSKISSON.

[Office Copy.]

*Letter from R. W. HORTON, ESQRE., to the
REVEREND JAMES EDGAR.*

DOWNING STREET, 29 September 1827.

SIR,—I am directed by Mr. Secretary Huskisson to acknowledge the receipt of your letter of the 22nd instant and to acquaint you in reply that in the event of your being duly qualified to proceed to the Cape of Good Hope for the purpose of undertaking the ministry of one of the Vacant Churches in that Colony, Mr. Huskisson will not object to make some small increase to your passage allowance in consideration of your taking your wife with you. I am &c.

(Signed) R. W. HORTON.

[Original.]

Letter from SIR RICHARD PLASKET to R. W. HAY, ESQRE.

CAPE OF GOOD HOPE, September 29th 1827.

MY DEAR SIR,—I have written to you very fully of late by His Majesty's Ship *Tamar* and by the Brig *Spring*, both of which vessels sailed three days ago, and I have little to add in the way of news.

The accompanying production of Lieutenant Colonel Bird was published yesterday by Mr. Greig. The papers laid before the House which have lately been received here, and the private correspondence that has accompanied them, with

Colonel Bird's pamphlet and Mr. D'Escury's removal, have worked up again for the moment all the party spirit of old times. It will, however, only be for a moment. As soon as the Lieutenant Governor returns and the proposed changes begin to be made known and acted upon, present interests will take the place of past prejudices and party spirit, and we shall hear little more on the subject either of Lord Charles or Colonel Bird.

What can have induced the Commissioners of Inquiry to recommend the arming of the Caffres and giving arms and ammunition to all the Native Tribes on our Frontier! I trust Lord Goderich will not sanction the proposal without further consideration.

If the House of Commons should ever take their Report into consideration, the first question it *ought* to inquire into would be the assertion that it was generally understood on their arrival, and *subsequently more distinctly avowed* that any civil servant who gave voluntary information to the Commissioners without the consent of the Governor would be dismissed from his office. I don't believe any such threat was ever held out by Lord Charles, and I conclude that the expression "and has since been more distinctly avowed" has reference to what I said to Dr. Barry. If that be the case, it is rather curious that they should follow up by saying *they did not inquire into it*, and still more curious that they should forget that I positively stated that although I thought as matter of form the civil servants should send their unasked for information through the Governor, that I never should recommend an omission of such form to be visited on the parties, and that in the only instance that has occurred I had so acted. They were aware too that this was only my private opinion, and that I had never even mentioned to Lord Charles Somerset what passed between Dr. Barry and me.

If they allude therefore to me, they ought to have expressed themselves, if they do not, they ought to be called upon to state by what authority it was so distinctly avowed.

I have &c.

(Signed) RICHD. PLASKET.

[Original.]

Letter from MRS. D'ESCURY to the RIGHT HONOURABLE
GEORGE CANNING.

CAPE TOWN, September 29th 1827.

SIR,—After a lapse of so many years I can hardly hope to be remembered by you, but the unfortunate have a privilege with those who are capable of feeling for them that requires no other apology for bringing themselves again into notice than the recital of their misfortunes;—Permit me therefore to address you. I was Miss Barclay, the daughter of Sir Robt. Barclay. I accompanied my Father to the Mauritius in 1813, two years after I married Mr. D'Escury of the Civil Service at the Cape of Good Hope, whose history there I shall add in the annexed Statement, the brief of which is, that after having during 14 years struggled with difficulties of every description, official and pecuniary, the latter from being remunerated in a daily depreciating currency, while the duties of his office increased in a contrary ratio: the former from an unaccommodating disposition that did not allow the compromise of his public duties with his individual interests; he had the misfortune of displeasing the Governor, Lord Charles Somerset, which from that nobleman's influence with Lord Bathurst produced an unfavorable feeling towards Mr. D'Escury in that quarter; the result has been a series of harassing perplexities, enquiries, suspensions, &c., which during the last four years have rendered our lives miserable, followed however by the declaration of the Commissioners that "Mr. D'Escury's official conduct and general deportment have been *meritorious*" and which *Lord Bathurst has admitted*. Yet, notwithstanding, these perplexities have now terminated by Mr. D'Escury's removal from office, at which Lord Charles Somerset appears to have aimed from the beginning, and thus he has completed the ruin of the man who with more honest zeal than worldly prudence, has dared to do his duty. This is a Woman's view of the subject, who, if she errs, your courtesy will pardon, in consideration of her feeling for the injuries her husband has sustained, and in whose ruin she herself, and her infant children, participate! And permit me now, Sir, to solicit so much of your indulgence as will induce you to read the annexed statement, and I cannot

but feel convinced that you will allow that Mr. D'Escury has not brought that ruin upon himself, but that he is made to suffer for the indiscretion, and unauthorised conduct of another, and if so, allow me Sir to solicit the benefit of your powerful influence to procure the reversal of this last decision against Mr. D'Escury, or in some other way to relieve our present Situation; for which my sincere gratitude shall ever be yours. I have &c.

(Signed) CLOTILDA D'ESCURY.

P.S. Mr. D'Escury has written to Lord Goderich on this subject by H.M. Ship *Tamar*.

[In October 1827 Mr. D'Escury with his wife and two children sailed from the Cape for England. He died at sea, and three weeks later the ship was wrecked on the Ramsgate Sands, when his widow and children narrowly escaped with their lives in a boat. All their effects were lost, and they landed in England in a destitute condition. There is some correspondence of a later date concerning the granting of a small pension to the unfortunate woman.—G. M. T.]

[Office Copy.]

Letter from the RIGHT HON. WILLIAM HUSKISSON *to*
MAJOR-GENERAL BOURKE.

DOWNING STREET, LONDON, 30th September 1827.

SIR,—I am given to understand that in the Schedule of the Civil Establishment of the Colony which Lord Goderich transmitted to you in his dispatch of the 14th of June last, it was his Lordship's intention to have included the name of Mr. P. G. Brink as High Sheriff of the Colony; and as his Lordship's intention was not fulfilled only in consequence of some doubts which were entertained in the first instance by Mr. Brink himself, as to his having sufficient legal qualifications for that Office, but no objection appearing to exist, upon due examination, on that score, I have now to signify to you the King's Command that you appoint Mr. Brink to be High Sheriff of the Colony. I am &c.

(Signed) W. HUSKISSON.

[Original.]

Letter from LIEUTENANT-COLONEL BIRD *to the*
RIGHT HON. R. W. HORTON.

LIESBEEK COTTAGE, 1st October 1827.

SIR,—A printed vindication of the late governor in answer to a pamphlet written by Sir Rufane Donkin, has I am informed been put in circulation here amongst His Lordship's friends ; I have not been able to obtain a sight of it, but it has come to my knowledge that the word "Fabrication" has been used in reference to the allegations contained in that publication. As Sir Rufane Donkin has unauthorisedly communicated from papers of mine, I owe to my own honour and to my friends and connexions to demonstrate that such a term cannot with feasibility be applied to such parts of the pamphlet as have been shewn to have emanated from me.

Such is the object of the accompanying "observations," and as such I trust that neither Lord Goderich nor yourself will consider me to have outstepped the boundaries in which I ought to be encircled.

I have endeavoured to remain as quiet as seclusion could make me, I sought not correspondence with the Commissioners of Inquiry, nor have I troubled your high office with my griefs ; I might therefore have remained unattacked, which I find I am not, but I presume the clear, concise and conclusive statement of facts, herein *proved*, will silence for the future the clandestine line which has been so long adopted.

I must trespass one moment longer upon you. In the enclosed I have quoted from Lord C. Somerset's letters to me. I have so done with very great regret, but I found from the Commissioners' Reports that His Lordship had communicated my private letters to them, and I know he has printed others ; this course left me no alternative, but you will do me the justice to observe that I have not alluded to any points in the observations excepting those in Sir Rufane's pamphlet in which my name has been quoted.

I might have seized this opportunity to have pointed out the incorrectness of the violence of expressions which called for Lord Bathurst's vengeance on me, and to have refuted the

facts upon which they were based, these expressions being now made public in the Commissioners' Reports; but situated as I am, I have preferred to let time produce opportunity for justice to be done to me.

It is not my intention to reply to any answer that may be attempted to be given to the enclosed, I will not enter into controversy, being perfectly *sure* that what I have asserted cannot be disproved. I have &c.

(Signed) C. BIRD.

[Original.]

Letter from MRS. E. C. ROWLES *to* R. W. HAY, ESQRE.

49 SLOANE STREET, 2nd October 1827.

SIR,—I need not, I am persuaded, attempt to express my disappointment at the receipt of your letter of the 15th August, notifying to me Lord Goderich's refusal to grant me the small aid afforded to the Widows of Englishmen belonging to the Government of the Cape of Good Hope, to bring their families to England at their demise, particularly after the unparalleled losses my late beloved husband experienced during his long services at the Cape of Good Hope, in consequence of the measure lately adopted of fixing the Rixdollar at eighteen pence sterling, and which has been so fully set forth in his Memorial. I do therefore, Sir, trust that you will have the goodness to bring my particular case again under the consideration of the Secretary of State for the Colonies, for although my unfortunate case may not come precisely within the very letter of the regulation, no one will, I am sure, deny that it is in every point of view within the spirit of it. The humane intention of Earl Bathurst in his despatch of the 23rd August 1821 evidently was to aid the families of English gentlemen who had served the King in a remote part of his dominions in providing the means of returning to the native country of their deceased parent. I cannot therefore abandon the hope that the mere technical difference of an English gentleman being nominated to his appointment in a British Colony by the Governor and of course

subsequently sanctioned by the Secretary of State, or nominated originally by the latter, should not be permitted to deprive the widow and young family of a meritorious officer dying in the execution of arduous but ill-requited duties, of the benevolent assistance intended by Earl Bathurst's letter of the 23rd August 1821. I have &c.

(Signed) E. C. ROWLES.

[Printed Slip.]

GOVERNMENT ADVERTISEMENT.

SALE OF THE GROOTE POST FARMS.

The undersigned having been duly authorised by His Honor the Lieutenant-Governor, intends on the 16th day of this present Month TO LET, AT THE GOVERNMENT FARM, GROOTE POST, for a Term to commence on the 16th instant, and to expire on the 31st December 1844, the following Government Farms, situated at the Groenekloof, in the Cape District, viz. :

Groote Post, in extent	2,672	morgen	303	square	roods.
Smalpad,	2,669	„	528	„	„
Kransduinen,	2,326	„	138	„	„
Rondeberg,	1,652	„	520	„	„
Jakhalsfontein,	1,229	„	473	„	„
Driepapenfontein,	936	„	78	„	„
Bokrivier,	1,258	„	0	„	„

The Conditions on which the said Farms are to be let may be seen on application at the Office of the Undersigned, and at Groote Post.

Immediate and approved Security must be given by the respective Tenants, for strict compliance with those Conditions.

On the same Day and Place also will be Sold by Public Auction, in the usual manner, the CROPS now on the Lands belonging to Groote Post and Smalpad, subject to such Conditions as will be made known at the time of Sale.

The following quantities of Seed have been sown on the said two Farms :—

Groote Post	.	20 $\frac{1}{4}$	Muids of Wheat,
		2	„ Barley,
		94 $\frac{1}{4}$	„ Oats,
		2 $\frac{1}{2}$	„ Rye.
Smalpad	.	21 $\frac{1}{4}$	„ Wheat,
		14 $\frac{1}{4}$	„ Barley,
		41 $\frac{1}{2}$	„ Oats.

Landdrost's Office, 4th October, 1827.

(Signed) J. W. STOLL, Landdrost.

List of Horses, Breeding Cattle, Farming Implements, &c. on the Government Farm Groote Post, to be disposed of by Public Sale, on the 16th of October, 1827.

HORSES.

- Three thorough bred Colts, got by Vanguard : one 4 years old, and two 2 years old,
- 6 Thorough bred aged Mares,
- 1 Thorough bred Mare, 3 years old, got by Vanguard,
- 2 Thorough bred Mares, 1 year old, got by Vanguard and Sorcerer,
- 1 Thorough bred Filly, got by Vanguard,
- 27 Aged Mares, got by Bustler, Cottager, Loyalist, Kutusoff, Cricketer, Orvil, and Vanguard,
- 2 Cape Mares,
- 6 Colts, Foals, got by Wokingham and Patrician,
- 3 Fillies, do., got by Wokingham and Fitzorville,
- 5 Colts, one year old, got by Vanguard,
- 7 Mares, one year old, got by ditto,
- 3 Colts, two years old, got by do.,
- 6 Mares, two years old, got by do.,
- 1 Colt, three years old, got by do.,
- 12 Mares, three years old, got by do. and Walton,
- 4 Geldings, four years old,
- 6 Aged working Horses.

HORNED CATTLE.

- 1 Thorough bred Bull, imported from North Holland in 1822,
 2 Ditto Tees Water Bulls, imported from England in 1825,
 1 Do. Bull Calf, out of a Tees Water Cow, by a Tees Water Bull,
 1 do. Tees Water Cow, imported from England in 1825,
 20 Bull Calves, got by ditto, do.
 18 Cow Calves got by the do. do.
 47 Aged Bastard Cows,
 10 Cape Cows,
 6 Bulls, one year old, got by the Holland Bull,
 10 Cows, ditto. do. do.
 14 Bulls, two years old, do. do.
 26 Cows, ditto, do. do.
 7 Bulls, three years old, do. do.
 25 Cows, ditto, do. do.
 135 Oxen, the greatest number of which are of the Bastard Breed.

SPANISH SHEEP, &C.

- 2 Thorough bred Rams, three years old, imported from England in 1826,
 20 Thorough bred Rams, aged,
 14 Three parts bred Rams, do.,
 27 Thorough bred ditto, one year old,
 51 Three parts bred do., do.
 4 Thorough bred Rams, two years old,
 6 Three parts bred do., do.
-
- 124
 62 Thorough bred aged Ewes,
 459 Three parts bred do. do.
 55 Thorough bred one year old Ewes,
 88 Three parts bred do. do.
 10 Thorough bred two years old do.,
 71 Three parts bred do. do.

- 337 Spanish Wethers,
 328 Ditto Lambs, dropped this year,
 35 Goat Ewes.

HOUSE FURNITURE, FARMING IMPLEMENTS, &c.

Consisting of Bedsteads, Bedding, Chairs, Tables, Sofas, &c.
 Muid and Half-Muid Sacks, Carpenters' and Blacksmiths'
 Tools.

- 6 Waggons,
 2 Carts,
 8 Single Ploughs,
 6 Double do.,
 3 Sets of Seed Harrows,
 2 Drag ditto.
 1 Portable Threshing Machine,
 1 Winnowing Machine,
 Empty Leaguers and half-Aums.

(Signed) H. CROWCHER.

[Office Copy.]

Letter from R. W. HORTON, ESQRE., to WILLIAM HILL, ESQRE.

DOWNING STREET, 5 October 1827.

SIR,—I am directed by Mr. Secretary Huskisson to transmit to you herewith enclosed a copy of a letter which has been received from the Agent for the Colony of the Cape of Good Hope, covering a statement of the balance of money at present in his hands, and of the demands which he expects will be made upon him to the end of the current quarter; and I am to request that you will lay this letter before the Lords Commissioners of His Majesty's Treasury and move their Lordships to give directions for such an issue being made to Mr. Courtenay as may enable him to carry on the business of his Agency. I am, &c.

(Signed) R. W. HORTON.

[Printed Slip.]

GENERAL POST OFFICE,
CAPE OF GOOD HOPE, *October 5, 1827.*

Notice is hereby given, that sealed Tenders will be received for Contracting for the Transmission of the following WEEKLY INLAND MAILS, at the Rate of Travelling in Hours affixed to each Post Town or Station, and back again in the same time :

- From Cape Town to Swellendam, in twenty-eight hours ;
- From Uitenhage to Graham's Town, in fourteen hours ;
- From Stellenbosch to Tulbagh, *via* the Paarl, in ten hours.

BRANCH POSTS.

- From George to Plettenberg's Bay, in sixteen hours ;
- From Graham's Town to Port Frances, *via* Bathurst, in six hours ;
- From Mr. M. Schoeman's Place, on the Sunday River, to Somerset, in eleven hours ;
- From Somerset to Cradock, in twelve hours ;
- From Graaff Reinet to Beaufort, in twenty-four hours ;
- From Tulbagh to Clanwilliam, in eighteen hours, or from Tulbagh to Pickeniers Kloof, in nine hours ; and from Clanwilliam to Pickeniers Kloof, in the same time ;
- From Tulbagh to Worcester, in six hours and a half ;
- From Cape Town to Simon's Town, *via* Wynberg, in three hours ; viz. from the 1st January next, to the 31st May, two Posts each way, every Week ; from the 1st June to the 31st August, three Posts each way, every Week ; and from the 1st September to the 31st December, two Posts each way, every Week.

It is to be understood, that the above distances are not to be subdivided by separate Offers for any part of the Route between each Post Town.

The Mails between Cape Town and Swellendam, and between Uitenhage and Graham's Town, will require two strong Horses, one for the Rider and the other for the carriage of the Mails. The Mails on the remainder of the Post Road now offered for Contract will be light, and only require one Horse for Rider and Mail.

The Tenders are to specify the lowest Rates in Sterling Money, at which the Weekly Mails are to be conveyed, for the period of One Year, on such days as may be fixed by Government. The Contract to begin the 1st of January next, and to end the 31st December, 1828.

Similar Tenders will be received for forwarding *Extra Posts*, or *Expresses*, on the Line of Road now proposed to be Contracted for, and each Tender for Extra Posts must distinctly state the Sum from Place to Place.

Tenders marked as such, and addressed to the Auditor-General, will be received until 13th November, which must contain the names of the Sureties to be given for the due fulfilment of the Contract. Security to the amount of the Annual Contract will be required.

Further Particulars of the Contract may be known on application to this Office, and at the Post Offices in the several Country Districts.

(Signed) R. CROZIER, Postmaster-General.

[Original]

Letter from MR. JOHN INGRAM *to the* RIGHT HONOURABLE
R. WILMOT HORTON, ESQRE.

LONDON, 5th October 1827.

SIR,—In making a special report agreeable to your desire of the emigrants who accompanied me to the Cape of Good Hope in 1823, I feel a task imperatively imposed on me, which I could rather have devolved on another; because it obliges me to speak of myself, and in doing so I trust it will be borne in mind I shall do so as little as the nature of the subject will admit of, and shall make the report of the Commissioners of Inquiry my principal guide to satisfy you and the public of the advantages derived by those poor creatures who accompanied me, all of whom are now in comparative opulence to the state they were in when they left Ireland.

1st Part of the Report alludes to those persons who accompanied me in 1820, and would not call at present for notice were it not that I have a heartfelt pleasure in stating the greater part of them are now good housekeepers and keeping their servants, and in every way perfectly independent.

2nd Part alludes to numbers mustered by the Agent for Transports, that those persons were not only mustered faithfully, but I greatly feared there had been a greater number on board, and absolutely refused several though I had ample provision for them, and were it not for the interference of the Roman Catholic Clergy I should have taken out the full complement. On a Sunday morning 283 persons were turned out of the ship by two priests (notwithstanding I had been feeding them for three weeks and upwards before) who came on board, and Dr. Coppinger, Roman Catholic Bishop of Cloyne, preached at Cove against their going with me. The interference of the Roman Catholic Clergy has been proved by two of my men of that persuasion before His Majesty's Commissioners of Inquiry subsequent to their report.

3rd part. This in a great measure must be attributed to the unabated zeal of Doctor Davy who had charge and my unremitting exertions to preserve cleanliness. Every morning at 8 o' clock I ordered every person with their bedding on deck, except such as were on the doctor's list, and proceeded below myself, with fourteen able fellows and washed the ship out fore and aft, and issued 20 lbs. soap every week to wash during the voyage. I employed some tailors and the women in making up two hundred suits of clothes to enable them to disembark, as they could not have [done] so unless I had provided them, which I did gratuitously, as well as having provided every person with a new blanket, mattress, and pillow.

4th part Speaks for itself, and is corroborated by the 7th part, that I had to do with as litigious a set of fellows as need be, but who were urged to it by those interested in slavery, who well knew that frequent repetitions of the introduction of free labour would ultimately reduce slavery altogether.

5th. By my indentures I covenanted with each and every

person to allow them the first month after arrival and maintain them at my expense during that period to look out for masters for themselves, and on compensating me for their services were at liberty to better themselves, of which a number as stated in the 6th Part did so, and those who remained and were sent back to me were of the very worst character, with very few exceptions, all of whom I employed in repairing my premises which I found in the most dreadful state of dilapidation and in building a wine store as well as two dwelling houses. The store is allowed to be the best and most substantial building in the colony, the whole being built of excellent stone and lime mortar, and not subject to those dilapidations which took place in 1822 from using clay, and capable of holding 2000 pipes of wine. The two houses let for £50 per annum each. Of those persons who remained with me, 16 men died from the immoderate use of spirituous liquors, which I doubt not would have been the case had they remained in Ireland, and had the same facilities of procuring it, for they were habitual drunkards.

7th part. I have only to remark I had selected as fine a body of people of good character (but was deprived of them by the influence of priests) as ever left Ireland.

8th part I regret to say I am obliged to dissent from altogether, for the number of 246 having got employment in so short a time speaks for itself. Had I acted otherwise I would not have a servant left to improve my estate.

9th part I was fully aware of before my departure from Ireland, and made application to the Governors of the Foundling Hospital at Cork to give me 100 Boys and Girls (which I mentioned to Mr. Bigge), and on their consulting the Act of Parliament they found they could not apprentice them to persons going foreign, though each and every one of them could have got trades, and this would have enabled them to provide for a similar number of orphans claiming admittance at the time, which the Governors regretted very much.

10th part. The number of European labourers that have been introduced into the colony is the very reason that more are wanting, because the great body of those who went out in 1820, as well as a considerable number of those who

accompanied me in 1823, are now in a condition to employ numbers themselves, and I do not hesitate to say from two to three thousand annually would be absorbed and at wages sufficient to make a poor Irishman feel he was removed from poverty to affluence.

11th part. In corroboration I have only to state, that having some right good tradesmen under me, I put as apprentices some young labourers in number as follows: 9 to masons, 5 to sawyers, 10 to miners, and 3 to thatchers, all of whom in the three years became masters of their trades and are now enjoying mechanics' wages, nor did the several tradesmen object to teach them for a little gratuity which I paid, though in Ireland they would not dare work with them unless they had served seven years and that to one of their own body; but used to say there is room enough for us all here to live.

12th part Speaks volumes in itself of the necessity of sending out labourers and mechanics of all kinds to the Cape, and partly corroborates my assertion of those interested in slavery creating a discontent amongst my people.

13 and 14 parts. That the supply of labour is deficient in every part of the Colony, but still more so in Albany, and as to the prize apprentices they have universally re-entered into their former master's service with the exception of about 150 or 200 who went to live with persons whose slave women they cohabited with before, and on the contrary of having any effect on European labour, those who lost their services must now look to European labourers to supply their place, and it was incredible the number of applications I had in consequence.

15th and 16th parts require no remark from me.

17th part. I feel myself bound to say would be attended with the worst of consequences, for these reasons. Those persons who entered with me knew the worst they had to contend with, and argued that if I could afford to give them a shilling per day and their diet and lodging, surely they could get more when done with me, and I regret very much the Commissioners of Inquiry should have altogether overlooked the last article of my agreement which enabled them to

seek the highest wages of the market on compensating me, which ran as follows :

10 Article of Agreement. That the first month after the landing of the said A. B. being for the sole advantage of the said A. B. for the purpose of the said A. B.'s procuring a master for himself in order to better himself which he is authorised to do, and on the said A. B. paying to the said John Ingram the sum (as specified by Commissioners) to have his freedom from this Indenture as if the same had never been, and the whole of the foregoing Articles of Agreement to be null and void between the parties, but in case the said A. B. shall not have paid the sum of within the said month aforesaid, he the said A. B. shall immediately apply himself to the work of the said John Ingram and conform to the Articles of this Agreement.

18th part. Allowing one pound per man as a compensation for the trouble of superintending them, I doubt not I could procure seven or eight persons in London who were at the Cape and who were well acquainted with what I went through to say they would not undertake the situation for ten pounds per man.

19th part. I am firmly of opinion the appearance of Government in any case at all with respect to the Cape of Good Hope would be the cause of much idleness and extra expense for the same reasons as expressed in the letters I had the honor of addressing you in 1823 on the same subject.

21st, 22nd and 23rd, I most sincerely coincide in, as it will be of the greatest importance that a great number of labourers be introduced into Albany, but by no means do I agree or coincide with binding *men for five years* and at so low wages as the applicants for them have stated, as the gradual introduction of labourers every year would cause a gentle decline in the exorbitantly high wages which have been paid, *but be assured in case of absolute necessity only and not of regular work.* I have &c.

(Signed) J. INGRAM.

